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NATIONAL MARINE FISHERIES SERVICE

JOINT MEETING: BILLFISH
AND HMS ADVISORY PANELS
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TAPE TRANSCRIPTION

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P R O C E E D I N G S

MS. LENT: While we are getting everybody seated here, let me just say good morning and thanks for coming back. I also wanted to express my appreciation. I think that we had 100 percent AP attendance at the hearing last night, and I was really happy about that. Thank you.

The two items that we wanted to add to the agenda for this part this morning on bluefin was some information on the bridge period quota, and Pat is going to provide that to you, what happened during that bridge period when we switched from a calendar year to a fishing year. And also, an update on the spotter plane rule.

I will spend a couple of minutes here while Pat is walking around the table giving his handouts telling you what I can about the spotter plane rule, what I know. Of course, we put out the proposed rule last year. We got thousands of comments. We have sifted through those comments. We have collected new information from those comments.

Also due to the long time period now between the proposed rule and the next step, we have also had a chance to go back and rerun the analyses that we did for the proposed rule. We have rerun those analyses using the 1999 season data, so we have some preliminary information that will help us decide what our next step is.

As of today, the agency has not yet reached a decision on what the next step will be. We are looking at a number of options. Obviously, the most obvious one would be to go out with the final rule, doing one of the options that came out in the proposed rule. There are other options as well. Maybe looking at some other possibilities and other aspects of this problem that we had not considered fully in the proposed rule, and issues that came up as part of comments and as part of how the season went in 1999.

Basically, those decisions are still pending. That is the best update that I can give you. This has been a long and unbelievably difficult process, more for you perhaps than for us, because you have been waiting for some decision from the agency on this. It is not an easy issue. It is very complex.

Miriam said yesterday that we are not driven by litigation, but we are driven by following the laws. But that is what litigation is all about. Someone says hey, you did not follow the law. So we are trying to be very careful about what we are doing. We are also under a continuous threat of contempt of court, just filing the proposed rule. The Secretary of Commerce was accused by the plaintiffs in the spotter plane case of being in contempt of court. So obviously, we are being very careful. Every step we take involves assembling a record, because we may need by the end of the week to assemble a record to take to the court.

So there is a lot of work involved and a lot of complex issues.

I will try to take a couple of questions on that, but that is about all of the information that I can give you. Rich.

MR. RUAIS: Well, I was hoping that we could get a little bit more information on some of the options that you might be looking at to effect the ban that I know the agency is seeking. Because obviously, this is an issue where the rumor mill is very strong all of the time. And my organization does not have a dog in this fight in terms of which way you go, whether you ban them or you do not ban them.

But we do have a concern about how you might achieve that, and the implications

on the way that the general category and the harpoon category have traditionally been run. So if you are looking at options that have a significant impact on the way that the general category traditionally has operated or the harpoon category, that is what I am interested in trying to get a handle on.

You know, we have heard that limited entry is an issue that might be used in conjunction with some sort of a proposal to ban the airplanes. We have heard things like the possibility of restrictions on the use of harpoons on general category boats or stands on general category boats.

And I am very concerned that some of those things, that someone might perceive that those are required, having some effect on those operational aspects of the traditional fishery might be necessary in order to sustain some sort of a ban on planes. And if there is consideration of that going on, I would hope that we get some sort of the AP and plus the public, get some early notice of that before we just simply get into a rule, a proposed rule or final rule, that simply makes it a de facto situation.

MS. LENT: Thank you, Rich. I appreciate that. Peter.

MR. P. WEISS: I just want to make a statement. It seems rather ironic that this panel, the AP, which I have sat on since its inception and most of us have, has never reached consensus on almost any issue that I can remember except the airplane issue, where there were two abstentions I believe and all votes in favor of. That one issue that this panel reached what you consider consensus on was not brought to an end or the panel's recommendations were not followed. Nothing else do I remember here a consensus being reached on a matter of relative importance except when we adjourn I think.

MS. LENT: Thank you, Peter. That is certainly a strong point in support. Okay. If there are no more questions about this, I am going to pass the mike to Pat Cheta. Yes, that is Pat. He has got a goatee now. Andy Rosenberg will be joining us at some point in time. So we will just do a quick interruption to let Andy chat with you, and you might want to ask him some of these same questions. Thank you.

MR. CHETA: Thanks, Rebecca. There are some overheads that I am going to go through again. I do not have them on power points. We are just going to look at them through WordPerfect on the screen here. It is not going to be quite as pretty, but hopefully it will work. And we are just going to go through the effort controls for the general category, and then some discussion of the angling category of fishery.

And then we will talk about some of the bridge period quotas and things like that at the end, and what we might stand for next year as far as the kind of rolling over of some quota that was not caught this year, or if we had to do any subtractions for overages that we had.

There are some overheads. What I am presenting here should be on the table, and I think that they were passed out to you this morning. Okay. General category effort controls. Basically, they do two things. They divide the general category season into time periods. They divide the quota up. And we also have restricted fishing days where no fishing can happen in the general category.

In fact, we will continue our variety of objectives. Lengthening the season for market reasons consistent with achieving optimum yield. They address some allocation issues to where and when the fish are caught. There are set-asides in the split seasons. And lengthening the season is important for scientific data collection purposes, specifically for the catch effort for the rod and reel fishery in the general category, which is using stock assessments. And the 1999 general category effort control specifications for bluefin were in Appendix III of the final HMS FMP.

Okay. For the status quo, what we had for 1999. What you have on your overheads is justified, center justified. So on the overhead on the screen here is a little bit clearer. Basically, we take the general category quota and divide it up into three time periods, June through August/September, and then October through December. And then we take an extra ten metric tons off the top and reserve it for the New York bite set-aside, which is implemented usually late in the season when the rest of the general category is closed to give some people off of New York and Northern New Jersey a chance at the fish.

The other alternative that was considered in the FMP is not to have any kind of split season, meaning that the season which will open in June will continue on until the fishery is caught. And the process for changing this would be a framework adjustment to the FMP.

Restricted fishing days. The status quo is Sundays, Mondays, and Wednesdays. Plus we have some selected market holidays when the market is closed in Japan. Other alternatives that we considered were similar to what we did in 1997 and 1998, just Sundays and Wednesdays, plus selected market days. Sundays, Mondays, and Tuesdays, so a consecutive three days. Alternating days, and then just straight fishing without any restricted fishing days. And per the regulations, we publish a schedule of RFDs in the Federal Register every year, so we do not have to go through the framework process.

In 1999, we scheduled 40 restricted fishing days. But due to some slow landings, we waived two separate NCs in action nine of the days. And you will see them in the next slide. The shaded days here were the days that were restricted fishing days. And if you will notice, in August we waived four days. And then in September, we waived four, and the one in October. Just because fishing was slow and we basically did it to meet -- we set up the quotas for June through August. And in order to catch the quota for June through August, we determined that we needed to waive those days. And the same thing for September.

And the process for changing these. We consider the input from the AP and the public, and the effectiveness of the 1999 restricted fishing days. And we will change it based on the 2000 calendar, which will just change dates of the Japanese holidays, et cetera.

We received some suggestions already from the public regarding the 2000 restricted fishing days from the general category Tuna Association. And we have gotten comment that we should have restricted fishing days in October under a similar schedule of those for September. And also, if there is an under-harvest like we had this year in June through August, that we should not just roll it over only into September, but we should divide it up between the September and the October through December sub-periods.

Next, or probably I skipped over it, there is a table with quotas, and I am going to skip that until the end. I am going to talk about the angling category fishery real quick, and what we did for 1999. For 1999, basically starting on June 1, the base retention limits, you could call it, were just one large school or small/medium of bluefin per vessel per day. And that continues on to the present.

And for two time certain periods, June 25th through July 25th, and September 1 through October 6th, we raised the retention limit to include two school bluefin in addition to the one large school or small/medium. So up to three fish could be kept below 73 inches. And this was done on some suggestions from constituents. We had a date in a certain season. It was not that we just opened it, and was going to close it at any particular time.

It gave people an opportunity to plan. We had one opening more in the beginning of the season for folks more in the south. And then we had one open in the fall for people more in the northern area.

And then there is also the trophy fishery angling category, which is the large, mediums, and giants. And that is just one per year per vessel. And from June 1, the northern area has been open and continues to be open. And the southern area closed January 8th of last month. And that is mostly to landings in North Carolina.

Now the angling category quota is divided between the north and south. And the way it has been in recent years, the dividing line has been the Delaware Bay, 38 degrees and 47 minutes. Basically, we did not use it in 1999, meaning that we did not open just the north or just the south in 1999. We just opened or had the retention limits apply for all areas. And the line is a problem. Because if there is a difference in the retention limits in the north and south, if vessels cross the line when they are fishing, if they are docked in one port and where they fish is in another area which is on another side of the line, it can cause some problems. And especially where it is right now in Delaware Bay, because a lot of folks who fish in the Cape May area fish out of Cape May, New Jersey fish further south in the southern area, but Cape May is in the northern area. So it creates a lot of confusion.

So we received some comments to move the line further north, so the Cape May area would be included in the southern area. And we have got comments that it should be moved to Ocean City, New Jersey or Beach Haven, New Jersey somewhere around 39/18.

Another option is just to perhaps remove the line completely. Wherever you are going to put that line, you are going to have people crossing it. And if we can just do our openings and closings coastwide like we did last year, we eliminate some of that confusion. We had some success with opening it earlier in the year for folks in the south, and then later in the year for people in the north. So we were able to geographically distribute the quota without having to use a line.

Just quickly before I get to the other table that is in the handouts. We have some estimates for angling category landings for 1999, and potentially what we could have for quotas for 2000. In the first column, we have the adjusted 1999 fishing year quotas for the various categories, school, and then large school, and small/mediums. And then the large mediums and giants, and we also had a school reserve.

As you can see, for both schools and large school small/mediums, our landings were quite low. We caught about half of the school quota, and less than a quarter of the large school small/medium. And again, we are still fishing in this year, but we are just going to go through May 31st. But there has been some catch of large school small/mediums in North Carolina. The schools have been closed, so that should not change much. So we are going to have some quota to be rolled over into next year. And as you can see, the last column in red is what the potential quotas could be for next year.

Again, these landings are preliminary and subject to change for sure. But this is what it looks like as of right now. So we will have over 125 tons in the school, and then over 300 in large school small/mediums. Large mediums and giants are not going to change much. And the school reserve, we only used a very small portion for some scientific purposes.

And then the last row is the full reserve, the regular reserve for the overall fishery, overall quota. And some of that is going to be used for over-harvest in some of the other categories. So the 90.1 is high. I guess I will take a few questions now. Rich.

MR. RUAIS: Pat, if you could, could you clarify. I understand that the numbers here are preliminary. But where are the estimates coming from, is this just strictly the large pelagic survey, are we talking about the phone survey, or a combination of the two?

MR. CHETA: The estimated landings are from the large pelagic survey.

MR. RUAIS: Only?

MR. CHETA: We have been using the tag numbers from North Carolina, but this is only from June. I do not think that we have anything for the last month or so or the last two months in North Carolina in this estimated fishing. So this is pure LPS.

MR. RUAIS: You are not using at all the regulation that requires anglers to call in their catch.

How does it reconcile, is the total coming from the, "I caught a bluefin, I caught a school of bluefin tuna today, and it weighed 60 pounds," are they lining up or what?

MR. CHETA: We are actually doing some analyses of comparing the LPS, the call-in system, and also the various tagging programs that we have. So I know that a draft report has been put together, and it is being finalized. In some places, they match. In some states, they match. In other places, they do not match up as well. But that report is being put together. Jim.

JIM: Pat, thanks. Let me recall back to last year, Rebecca, with Congressman Saxton,

Congressman LoBiondo, Terry Garcia, Chris Rogers from your agency, myself, and members of the Cape May party and charter boat organization. We had a guarantee at that meeting that the line was going to be moved. It has to be moved. If it is not moved, we are going to run into the same problem again with the people in Cape May being able to fish in two zones. It is going to happen. I mean it is inevitable.

There is kind of a nowhere zone off the coast of New Jersey where boats from around that line where we talked about, they do not fish south of there. They go to the north. They fish the mud hole area, and they fish the ridge in there. So that is the best scenario to have that line change in there, and that line needs to be moved. Otherwise, what is going to happen, your agency is going to be in the congressional offices again arguing about this. And I think that we need to settle this. Thank you.

A PARTICIPANT: Well, addressing what Rich was saying, North Carolina, they can tell you, they have a weekly update, and they can tell you to the day what they are catching. All you have to do is call down there.

A PARTICIPANT: And we get those reports from Doug Mumford on a weekly basis, and we are in close contact with him. And he actually sends in the cards to us through the tagging program. And it has been a relatively good year down there, at least through the first week of January or so, and then the weather kind of turned. But we do have those landings. I just do not believe that they are incorporated into these estimates so far. It would be on the order of another five to ten metric tons of large school large/mediums in the south. So instead of 32, it would go up to say maybe 40. But we would still have significant underages for the 1999 fishing year.

A PARTICIPANT: The fishing has been fabulous. The effort has not been what it has been in years past, but the fishing has been fabulous.

MR. CHETA: Okay, John.

JOHN: Pat, just a small reminder. The chart here does not say what the measurement is in. I guess it is metric tons.

MR. CHETA: Yes.

JOHN: And one of those items that I watch closely, and again these things have to stand alone, and we need to make them easy for everybody to understand.

MR. CHETA: Mark.

MR. SAMPSON: You did not mention Maryland's tag program. And I am curious as to number one, are those numbers reflected in these numbers. Also, do you have information as to how they compare to the large pelagic survey numbers?

MR. CHETA: Okay. They are not reflected in these numbers. But for those of you who do not know it, there is a similar program as to that in North Carolina and in Maryland where each recreational bluefin is tagged. Folks when they come in have to go to a reporting station, fill out a card, and get a tag for their fish before it can come off the boat. And no, they are not in here.

This study that I was talking about, the analysis of the various reporting systems, includes the Maryland numbers. But the preliminary analysis of that, they match up pretty well with the LPS. And we are working with the state to implement the program again. But the preliminary analysis is that they match up pretty well.

A PARTICIPANT: Would it be possible for us to at some point see a comparison between those two numbers, being as the LPS numbers have been a big bone of contention with all of us for so long? We have been saying that they are flawed, and we know what our catch is. One way or the other, we would love to see it in print as to what that showed and what our tag return showed.

MR. CHETA: I think when the little report that is being put together is finalized. I do not see any reason why not.

A PARTICIPANT: Being as I am from the Gulf, I just want to make mention here that the new season seems to have effectively cut the Gulf fishery out of the trophy fishery, and they are not happy with that. The bluefins are not in the Gulf. When the new season opens, they have left mostly. And so by being at the end of the season, there is no quota left, as evidenced by this thing which says that beginning in January that you cannot catch any. But when the season opens again, they will not be there.

The historical data shows that. The long lining landing should show that. And I am concerned that you all did not consider that, or whatever the concern is in that.

MR. CHETA: Rich.

MR. RUAIS: A couple of small points. Ron mentioned that fishing has been fabulous. And I have heard the same thing, particularly off North Carolina. But obviously, that is catch and release, because these statistics do not suggest that fishing has been fantastic. Once again, the numbers are low.

The question I had was why on the school category is the initial 2000 fishing year quota 81? Eight percent of thirteen, whatever it is 44, is clearly over 100 tons. And there is an underage as well. I just do not understand that. I also know, and we supported wholeheartedly that you now have four years to balance even the eight percent in the angling category, which is a good thing. It is going to allow you to have starting off for all of the angling category a much larger quota now that you have the four years to balance it off. But why 81 as opposed to eight percent of what the U.S. quota is?

MR. CHETA: I was not sure if anyone was going to catch that, but it probably should be 111, eight percent. I noticed it this morning myself. Actually, it is 111, and then we take away the 18. So it actually should be for the school reserve, which should make the initial 2000 quota 93, I believe. So it is a typo. What happened was I think it was just carried over from the adjusted 1999

fishing year for the table.

Are there any other questions for now? Rich.

MR. RUAIS: Yes. With potentially this large of a quota in the large school small/medium, what is the plan for North Carolina, is it your intent to give North Carolina a larger landing quota of small/medium large school for the winter fishery or not from this angling quota?

MR. CHETA: We are going to talk about that actually very shortly, but I do not think that right now there has been much discussion of raising that retention limit right now. That is definitely a possibility, although I do not know how much longer that fishery is really going to continue. For the next couple of months maybe, or another month or so.

What we want to talk about are options for the following year. Because what we have had is the one large school small/medium. That is kind of the base retention limit, and we have not been catching anywhere near the quota. So options for the next year, instead of having it as one large school medium, we could have two or something like that. But that is one of the things that we could discuss here, and we are looking for input from the AP and other members. So if I could just maybe move on to some of the next slides here. Yes, Rich.

MR. RUAIS: If I could just have one more follow-up on that one though. And I apologize, because I am probably not as up to speed on this as I should be.

But there is no set-aside for North Carolina right now, it is strictly here is the bag limit, and whatever you produce under the bag limit, that is your catch quota; that at this point, that is where we are at with North Carolina?

There were a few years I know where there were 40 tons, or 50 tons, or 60 tons that were set aside for the North Carolina winter fishery. Now that is not the case anymore. It is strictly whatever the bag limit is at the time. There is your fishery, and we will know what you caught after it is over. Is that the deal now?

MR. CHETA: If we feel that the catch is too high. In the past, the North Carolina fishery was very much in the beginning of the year, January. So if the catch was very high and we felt that we were not going to have a quota for later on in the season, there would be reason to shut it down. Now they are on the tail end of the season, or at least the second half. And there are not many other fisheries happening between now and the end of the season. So there is not much reason to shut it down.

From the last few years, we have a general idea of what they caught, five to ten metric tons. So that is the general idea that perhaps we have when we are monitoring the catch. So there is not a particular set-aside for that area. There is a retention limit, and what they land over that period is what they get.

A PARTICIPANT: Well, to follow up on what Rich was saying. He is right. Originally, we were given a quota. And according to the LPS or the MRFSS survey, we exceeded our quota, and we were shut down two years in a row. And that is when North Carolina had to institute their own counting program. And ever since we have counted our own fish, we have not exceeded any kind of quota.

But we are very concerned about not being able to catch a fish from January through April. And we need some quota. I was told that we would always be taken care of there. But I assume that if it was caught the first part of the year, that we could go without any fish from January through March. Is that correct?

MR. CHETA: I am not sure.

A PARTICIPANT: I am saying that since the fishing year has changed to starting in June, that if the quota is caught before December, then we would basically be without a season.

MR. CHETA: Right. And that is why we have the ability to close down the fishery at any time in any area to make sure that all of the geographic areas have an opportunity to catch the fish. What is closed down right now in North Carolina is just the trophy fishery, which the quota for the south has been met. But the large school small/mediums are still open.

A PARTICIPANT: Right. Well, I might add that this is the first year that the trophy shut down. So the change in the fishing year certainly has affected us.

MS. LENT: We are going to take a quick break from focusing on bluefin issues, because Dr. Andy Rosenberg is here. Andy is our deputy assistant administrator, and has come to greet you this morning, and take any particular questions you might want to ask. Andy.

DR. ROSENBERG: I apologize for interrupting, but I guarantee that you do not want to see me before 8:30 in the morning. First of all, I guess that I would like to welcome the new and returning members. I guess I know maybe half of you, or have at least met half of you I should say. And I certainly appreciate the time that you put in on the Advisory Panel. These panels are important.

The agency puts in a lot of effort, and I know that you put in a lot of effort and time in this process. We need that desperately. The HMS issues are some of the most complicated issues that the agency deals with, and certainly the most contentious for a wide variety of reasons that you know as well as I do.

There are a lot of challenges facing us for the coming year, as they were last year. And many of you are returning members. We greatly appreciated the help on trying to get the FMPs in place. But as you know, FMPs are not sort of cast in stone. They are meant to be developmental documents that change over time, as people have better ways to do things, and better ways to manage. And, of course, as the resources, and the industry, and other groups change their perspectives and positions.

So this panel is crucial to that process. I would be happy to answer questions in just a minute. I would like to state one thing that may be obvious to all of you, but it is very important to us. And that is when we are receiving advice from the panel, and the panel takes positions, and recommends that we go in particular directions, it is extremely important that not only do you state what your viewpoint is, but also help us with the rationale for making a particular decision.

And I am going to use one of the most contentious issues we have, which is spotter planes, as an example. I know that this panel has voted to ban spotter planes, and I know that there was some discussion earlier today on that point. Of course, we have a court who is saying what is your justification for doing that. The justification is not the vote of the Advisory Panel. The justification is not because most people in the industry want to do it. That is not a justification under the law. I wish it was in many cases, but it is not.

We need specific information that we can apply to addressing our responsibilities under the law, the various laws that apply. And I just using again spotter planes as an example. Because the fact that everybody wants to do it, and everybody wants to do the right thing, or you all know that it has a basis internally does not necessarily help us put together the legal arguments to take a particular action.

The reason I say help us with that is because obviously we have analysts working on it, and we have people collecting data. And we try to apply that data in the best way we can. But you all know that you have a lot of

information to contribute to that process, which may not be blindingly obvious in the data.

So in some sense, the advice that you can give us is your opinion on what should be done. But equally important is your perspective on what the rationale with respect to our legal mandates would be for taking that action. That does not mean that I expect everybody to be an expert in each of the laws and responsibilities that we have. But I think that you know the general perspective under the Atlantic Tunas Act, the Magnuson Act, and the National Environmental Policy Act, that we need to put together to justify taking any particular action or not taking any particular action for that matter, because we have to look at alternatives.

So I am sorry if I am telling you something that is blindingly obvious, but I have had a lot of discussions with councils and various panels where people say well, we all know that it is the right thing to do. That is fine, but we have to document it and justify it legally. And as you know, these days argue it in court on every single issue, usually from both sides, people who feel a justification is insufficient and people who feel that another alternative is better.

So with those very general words, again I would welcome you and thank you for serving on the Advisory Panel. I do know that it is heavy lifting. But I also assume that you are here because it is important to you, and it is extremely important to us. So thank you for that. If people want to ask me about specific issues, you are welcome to. Rich.

MR. RUAIS: Thank you, Andy, and thank you for stopping by. I will repeat a question that I was asking Rebecca earlier on the airplane. Just to make it clear, my organization does not have a position on what to do about airplanes. I have got members on both sides. But all of those members are also concerned about the potential implications of what the agency might do to effect a ban, and what those implications are for the traditional way that the harpoon and general category have operated.

And right now in the fishery, there is a big void, a black hole, of what is going on, and what are the alternatives, and what are the implications. Whether it is rumor or people just conjuring up things, there are suggestions out there that some of the things that are being considered could have some fairly dramatic changes to the way that the two categories have historically operated.

The comment is that I would urge the agency as quickly as possible, and obviously here we are in February and this is long overdue anyway, to get that word out to people what the agency thinks or what the lawyers think are necessary in terms of changes to the category in order to meet the sentiment. You have the overwhelming sentiment from the fishery. I do not have to make it for you. You have gotten it from congressional testimony, and public hearings, and written comments, and the whole deal. The AP has taken a position.

But there is still a concern. And you should not overlook that, that there is a concern that if there are some changes that are basically in many people's minds that are unacceptable to how the general and harpoon category are operating, then we need to know that early on, so we can set you on the right course.

DR. ROSENBERG: Early on in this context, it is getting a little strange, but I appreciate the comment. And let me tell you a couple of things about it, because I know there is a lot of interest in planes, and I know that Rebecca talked about it earlier. First of all, fair enough, to go through the rule making process, in most cases, we always would go out for public comment, proposing the final rule in the normal Administrative Procedures Act fashion. And we certainly intend to do that here.

The difficulty is that, of course, if we stuck with what we had, again yes,

the Advisory Panel has been very clear, and the judge also has been very clear that he does not really care about that. He is not very interested in your vote. And so I am sorry he is not very interested in your vote. That is not a justification for him under the law, which is why I used that as an example.

For us to simply repropose or to go through with what we had would require and he has made it clear that requires substantial additional justification because he has not accepted the rationale in the past. So we are considering whether there is a way to modify that, I do not think that the rumors are any surprise, whether there is a way to modify categories that actually give you the ability to justify it on other grounds other than we proceeded before given the reaction from the court.

The timing issue is problematic, but I am hoping that we will move forward either with the new proposed rule, which is what I expect will happen but I do not know, or with a final rule. But even if we did that, probably we would have to consider whether additional comments were needed for the final rule for the proposal that we have on the street.

At this point, I can tell you what I would expect fairly shortly. We will get a decision to go out with a new proposed rule, and then take the comments. Because whatever we do, some people are going to be concerned just as you pointed out. You have members on both sides of the issue. As far as I can tell, every group has members on both sides of the issue in some way or another or some aspect of it, even if the general sentiment is very clear from all around the table. I think I had Jim.

A PARTICIPANT: Andy, good morning. Thanks for coming by here. And I have a question regarding the NMFS proposal for the closure in the long line area versus the legislation. One of the conservation organizations at the congressional hearing on Tuesday claims in their testimony that NMFS does not have the authority to initiate a buy-out program.

Now my understanding in Magnuson is that there are provisions for NMFS to do that. Is that true or not true, can you clear this up?

DR. ROSENBERG: Sure. NMFS does not have the budgetary authority for a bio program unless there has been an appropriation to fund an industry funded buy-out program. In other words, we cannot sort of agree on a buy-out program that commits Congress to funding it. So we have no authority to pay for a buy-out program.

Under Magnuson, we have the authority, and Mariam can throw a rock at me if I get this wrong, under Magnuson we have the authority to move forward with an industry based buy-out program, and ultimately a bond issue under Title 11 of the Merchant Marine Act, to fund that bio program to be paid back according to whatever business plan is developed by the industry. Well, that is different from what some of the discussions that have been proposed, the legislative proposals and so on.

But we do have the authority to do that. What we cannot do is say yes, we are going to have a buy-out when we have no appropriation to do a buy-out. So in a sense, they are both right. We do not have the authority to agree to a buy-out program, but not really what people are specifically talking about in this instance, because there are some variations on that theme. If we had the appropriation, then I think we would have the authority. She has not thrown anything at me yet.

MS. MCCALL: (Inaudible.)

A PARTICIPANT: Let me follow up. I got the impression from the assistant administrator that she was supporting the legislative approach over the regulatory approach, which was kind of mind-boggling to me.

DR. ROSENBERG: No, that is not correct. We are saying that we support the concept of the legislation in the sense that there needs to be changes in the fishery, and it needs to be done in a way that obviously mitigates some of the economic impacts that will have. We do need to move forward with regulations with regard to reducing discards and protecting small fish and protected species such as turtles and so on.

So in concept although not the specifics, we are in support of the legislative initiatives to then mitigate the impacts of what we effectively are required to do by regulation. But we do have to move forward with the regulatory approach for a number of reasons. One, that is the mandate under the law. And we also, of course, have a settlement agreement that says that we will do that by May 1st.

So part of the difficulty here has been the understanding of why we are doing that without waiting for the legislation. We really do not have the option of waiting for the legislation. So I do not think that Penny in the testimony or in any of the discussions that we had, and I was not at the hearing, I certainly did not mean to imply and I do not think she did, hopefully she did not, that we prefer the legislative approach to the regulatory approach. But they can fit together very well.

A PARTICIPANT: I think you would need to check that record. Because Congressman Pallone came back to Penny and said a comment regarding that, and you will see that was a pretty weak statement.

DR. ROSENBERG: Well, in the testimony, it specifically says that we support the concept of the legislative approach, but we must move forward with regulations. And that is in the written testimony, and I believe that there are copies of that on the side table.

MR. P. WEISS: I just want to make a comment on your opening comments. If I can paraphrase what you were saying, you were saying that you would like the panel once the vote on something to even go beyond that and give you as much backup or information as they possibly can on that particular issue. Is that correct?

DR. ROSENBERG: Yes, but it is not necessarily once you vote on something. I think it is incumbent on panel members to say I think we ought to do this, and I think that we ought to do it under the law for these following reasons, not just because my association would rather have it this way.

A PARTICIPANT: Yes, and getting to that point. Not every panel member here is particularly knowledgeable on every issue. But the issue that you happen to be talking about, which is the airplane issue and the spotter plane issue, which we are quite involved in, I think I have and I think the organizations have done everything that they possibly can to aid NMFS in this particular process. We have hired lawyers. We have sent you legal cases. We have sent you practically briefs. We have thousands of comments that were done on this thing.

You know, that example, we have done what you are asking us to do. And I am only sorry to say that the results have been not there.

DR. ROSENBERG: Well, we have used all of that material. And, of course, the court has not accepted it. Secondly, I use that example because specifically we went to the court and said look, the Advisory Panel thinks we ought to do this. Clearly, there appears to be a majority of people who think we ought do this who are involved in the industry, and the judge said so.

That is why I am using the example. Again, I am not pointing a finger at anyone. I am just saying that the arguments are very difficult to make. I am not saying that you have not tried to help. It is just that these are very difficult issues.

(End side A, tape 1.)

DR. ROSENBERG: (Inaudible) which is an allocative issue, strictly an allocative issue. The problems of making that legal justification are formidable. It is not because we have not tried to do it and not because you have not tried to give us information, but it is a difficult argument.

A PARTICIPANT: I was at that second hearing, I think the one you are talking about. I do not know if you read the transcript of that hearing.

DR. ROSENBERG: Yes, I did.

A PARTICIPANT: But I do not remember the judge saying all of these things that I am hearing about, whether he does not care about the AP. He finally said, you know, this is the proposed rule, come back and see me when the rule is final. He did not even know what we were doing there or what the pilots were doing there. I mean that is what he really said.

DR. ROSENBERG: But in the previous case, in the previous hearing, this is about the fourth time around, and again I am looking at Mariam, specific in the opinion it said that the justification that effectively everybody wants to do it is not a justification for taking this measure.

A PARTICIPANT: Yes. But there was no AP panel vote on the previous. It was done under the Atlantic Tuna. I could get into a whole thing, which I am not going to bother anybody with. But, you know, I think that there is an attitude being taken that this judge is going to rule against you no matter what. That is possible, I do not know. But you are never going to find out unless you try, I will tell you that.

DR. ROSENBERG: Forgive me, but we have been trying for quite awhile. And I did read the transcript of those hearings, of that session and the previous ones. We have been trying for quite awhile, not successfully. The issue is not solely whether this judge will rule against us. But we are not going to go to a judge if he has identified material weaknesses in an argument. And there are questions about whether we can prevail either in his court or on appeal. And so again, it is a difficult situation. I am not criticizing this panel or any member of the panel for that. I am just reminding you that because these issues are so difficult and contentious, give us the help that you can in terms of the rationale. Hammer.

MR. BEIDEMAN: Several things, Andy, on the broadness of that section of the Magnuson, whether it includes HMS fisheries. We did quite a bit of research on that prior to embarking on our legislative effort. In fact, we sat down with the National Marine Fishery Service. And at that time, there was a large question of whether it did or did not cover HMS fisheries. We sent legal advisors from the cooperating parties, and even the cooperating parties sat down with key congressional offices both majority and minority to get a specific read on that section.

Now our guidance was no, it does not cover HMS fisheries. It does not specifically add other fisheries under the authority of the secretary, you know, in the language that is typically used when HMS fisheries are also to be included. Our read from the congressional offices was that that section does not cover HMS fisheries specifically. And as we know, the nature of the proposal in the legislation goes far, far beyond even what is covered under council fisheries.

Now I am sure that the lawyers could argue this half of forever, but they are already getting paid enough. But key congressional authors of the Magnuson-Stevens Sustainable Fisheries Act have clearly told us that it is not covered.

DR. ROSENBERG: And we disagree. And I will say two things about it. Your lawyers may get paid enough. I am not sure about ours. I had to say that, so Mariam would be nice to me. We disagree. We do think it covers HMS fisheries.

And going and asking congressional staffers what did you mean when you wrote this does not really help. Because I have done that a number of times. And everybody will tell you that what we really meant to say was all kinds of different things. Well, that does not matter. It is what the language actually says, and our interpretation is that it does cover.

You may disagree. And ultimately, we may have an issue there. But fundamentally, since we support the concept of the legislation, I am not sure that we have to have this debate. Maybe we will at some point. Let's see where the legislation goes. I think that is the critical issue, and when. I think part of the problem is the timing. But I do agree with you that the legislation goes beyond what we believe our authority is within the Magnuson Act. In addition to that, of course, the legislation will ultimately have to address the issue of appropriation, which we cannot do as I pointed out in response to Jim's question before. Joe McBride, I think next.

MR. MCBRIDE: Two things, Andy. The first is philosophically in regard to the panel. You congratulated us and thanked us for our efforts and endeavors of being here, and working on whatever projects were before us. Yet at the end of that, you said that when we did whatever we did, we used the illustration of the spotter planes, and you brought it to the judge, and you said he does not really care in essence what we say. Well, that is one problem.

Second, along the same lines, sometimes within the agency itself and the AP panel, we make recommendations to the agency, and they ignore them also. You know, not quite as bluntly as the judge might have, but we are concerned about that. If we are here and we make suggestions and we give you all of the information, and you do not say gee, give us more, guys, and we give you what we have available, and after a discussion that we ask for something, we would like a response as to why you do not go along with our suggestions. And I think of one illustration on the bag limit on yellowfin tuna, which is very contentious to us. All right. That is one, if I may.

And the second question, Andy, is a little more mundane, and I am not an expert in this. But there are legislative proposals regarding buy-outs, et cetera, et cetera. Part of that proposal is an attempt by the legislature to take over some functions of the agency for approximately four years. And I correct in that, in summarizing it; Rebecca, am I correct in that?

MS. LENT: There would be a moratorium on any further time/area closures for four years.

MR. MCBRIDE: So taking some administrative policies away from the agency. And what is the agency's stand on that particular issue, are you for it or against it?

DR. ROSENBERG: Let me address the first issue first.

MR. MCBRIDE: Okay.

DR. ROSENBERG: And that is that I did not say that either we or the judge does not care what the Advisory Panel says. I said that the vote of the Advisory Panel is not the justification under our statutes to take a particular action. In other words, we cannot write a document that says that we are taking this action because the Advisory Panel voted unanimously that they all thought that it was the best thing to do. We chose the Advisory Panel members for their knowledge of the industry, and they all thought that it was a good thing to do. Therefore, we are going to take the action.

Unfortunately, there is not a provision in any of the statutes that says a justification for taking a particular action is a vote of the panel. That does not mean that we do not care about what the Advisory Panel says or that the judge does not. Because you are chosen for your knowledge of particular fisheries and particular issues related to resource management.

All I am saying is that while you may know as you are formulating your own position and making your comments to the Advisory Panel as to why you should ban planes, have a buy-out, or whatever it might be, that it is vitally important to ban planes for the following reasons related to the national standards in the Magnuson Act and provisions of the Tunas Act or whatever it might be.

Sometimes you may think that we should know what your rationale is with respect to those particular statutes. All I am asking is be a little more explicit, that the economic impacts of doing that or the conservation impacts of doing it are that for the following reasons, and give us some help in crafting those arguments. That is not saying that we do not value what the Advisory Panel is saying. It is quite the opposite. I am saying give us a little bit more background of what the legal rationale is.

The second point is yes, sometimes we do do something that goes the other way from what the Advisory Panel voted for, the same as obviously the judge does. And we do that if we feel that under the prevailing statutes that it is either that what the Advisory Panel has recommended is not justified, or that another measure is in a stronger position. It is similar to the way that it works with councils. It is not the same, because the councils are actually preparing the proposals and crafting the arguments directly. And the authority is different, of course, in approval and disapproval.

With things like the yellowfin tuna bag limit, I believe that we have made an argument as to why we are doing it. That may not be an argument that is acceptable to you. But what I hear you saying is that you need that argument made in clearer terms to you and more explicitly. That is a fair enough comment. Many times, just like what I am asking you to do now in terms of crafting your rationale, you will say well, this is the rationale for doing it. Well, sometimes there is communications problems. We say this is our rationale for doing it, and to you that is really not an explanation. We will continue to try to do that. If that is a particular issue that you want additional discussion on, I am sure that Rebecca would be delighted.

MR. MCBRIDE: The second one.

DR. ROSENBERG: Well, the second one was the bag limit in terms of trying to communicate.

MR. MCBRIDE: The second one really, Andy, is in this particular legislation as proposed on the buy-out, what is the position regarding the restrictions on the agency for four or five years.

DR. ROSENBERG: And our position in general is that is not appropriate, because we need to have the authority to adjust measures as needed. And that is a general situation. If there is a proposal to say okay, we are going to abrogate your authority for a period of time, we are not in favor of that, because it makes it more difficult in our view to meet our mandates. If something changes, we want to be able to adjust to that in either direction.

MR. MCBRIDE: If I may make a suggestion to the agency. I belong to the New York State MRAC, a similar agency made up of commercial and recreational fishermen. And now I am not a lawyer, so I do not want to give you the specific laws. But the DEC, the New York State DEC, analogy to the National Marine Fishery Service, is mandated to accept -- we do not make the laws like the council, but they bring the laws to us to be reviewed, and we make requests that they then might devise through their legal agencies into laws and so forth, and through regulations also the same way.

But if we make them and vote on them, they pretty well have to say why they are not going to do it, and they are limited not to do it in a legal sense for the most part, or some sort of legal sense, whether it is economic legal or

whether it is actually in violation of the section of the law.

So the point I am making, the panel, the New York State panel, analogous to this particular panel, has some effect. It is not just a rubber stamp agency. If we like what they say, we will accept it. If we do not like what they say, we will ignore it for whatever reason. I am not arguing that aspect of it. And that is why I made the comment about the judge's comments, even though you might be summarizing them or what have you.

I think it is important. In the highly migratory species, I think this panel probably has as much knowledge as to the councils in that particular area. Because the councils at one time, the Mid-Atlantic councils, had the highly migratory species in it, and they took it out. God only knows why they took it out of the Mid-Atlantic Council, and put it back in the agency, but they did, and so be it. And we would like to have a greater mandated role I think in making deliberations, summarizing it that way.

DR. ROSENBERG: And obviously, mandates are the responsibility of Congress. But I think what you are asking for is a better explanation of particular decisions we make. It is not the case that the comments and positions of the Advisory Panel take are not utilized or ignored by the agency. You can see that if you look at changes from proposed to final rule. That does not mean that everybody gets everything that they want, but that means that the comments are accommodated.

Look at the HMS plan. There were huge changes between proposed and final rule, and a lot of those based on input from the Advisory Panel as I recall. That is just not the case that we do not pay attention to it. But your point is well taken that if we are making a decision that at least some people do not feel does not go along with what the panel recommended, we should need to spend more time explaining why very specifically. Because in most cases, it is not that we would rather do something else, but it is because we feel that our legal mandate requires that we do something else.

MS. LENT: Mau.

MR. CLAVERIE: I was one of the abstainers on that airplane boat, because the Gulf Council does not have a dog in that fight. And I would not want to go home and say I suppressed something, you know. I know what you are talking about, avoid the arbitrary and capricious situation. And during the discussions on the airplane, I call them the dog fights, the airplane battle up here, there was a great deal of justification in terms of national standards spoken in the room.

Now whether or not it got on the record, I do not know. And maybe that is a problem that needs to be addressed. I just do not know. Because I have not read the briefs and the record and all of that to see what the facts are that are alleged, but there was a lot of that kind of stuff that you are asking for stated during the discussions on this matter.

DR. ROSENBERG: And again, I am not criticizing you for not doing something. I am asking you to continue to keep it in mind as you go through your discussions, because it is very important to us. Again, spotter planes because it is an allocative issue, and many issues in fisheries of course are allocative, is a very difficult argument. We used whatever we could get. Of course, it was on the transcripts from your meetings, and used in crafting the documents as best we can. And we still had a problem with arbitrary and capricious opinion from the judge.

A PARTICIPANT: To that point, we had a transcript of a scientist's explanation of MSY, which was given down in Florida at one of our meetings. And almost every other word in the typed out transmit was unintelligible. And so if that is the way that the record of these meetings are where we were discussing the pluses and minuses of spotter planes, I can understand how it is a serious

problem. It was Pamela Mace in Tampa, I think.

A PARTICIPANT: (Inaudible.)

A PARTICIPANT: And another point I had, if I may, was could you please a little further on the front burner a decision on the use of e-mail for comments in this agency.

DR. ROSENBERG: Yes. And for that one, it actually is on the front burner. The problem is that we need to make sure that we have a consistent policy for all of rule making. In fact, also on the front burner is trying to go to an electronic rule making as opposed to getting the Federal Register with your morning Wheaties. But it is on the front burner to end up with a consistent policy.

Our problem is that we did not want to come out with a policy that varies between different offices around the country and so on. And we are looking at what other agencies have done for e-mail comments. We also want to make sure that we have the ability to know who the commenter is, because that is required. And we cannot go any other way in the way that the commenting procedures go. It is a little more complicated than simply reading your e-mails unfortunately. But we had been talking about it actually in January trying to get something done fairly soon to do that.

A PARTICIPANT: We wish you would include the councils in the discussions. Because some councils allow it and some councils do not, and I know that our council allows it. And we have some good practical experience on pitfalls and whatnot. And I assume that whatever you all adopt, that the councils will adopt.

DR. ROSENBERG: It is probably a good topic for the council chairs' meeting in May, so we will take that up. Jack Devneu.

MR. DEVNEU: Good morning. Thanks for coming down, Andy, and spending some time with us this morning. I had a couple of comments I guess relative to your comments earlier with respect to the agency position, and with respect to the proposed legislation and the proposed rule.

Let me take a look at my notes here. I wanted to, I guess, explore a comment on the statement that the agency's hands are tied with respect to having to go through with the proposed rule and final rule time table. If you are committed to this action and it is final, and you have to hold to this time table.

My understanding is that the time table that has been set is a result of negotiations between the agency as defendant and a plaintiff in a court case and the judge. And as such, it was negotiated. And I live my life in business a lot on negotiations. And negotiations can be reopened, and negotiations can go a lot of places.

And I have no doubt in my mind that if the will was there with the parties that the time table could be renegotiated, which would in fact if that happened go ahead and support your further comment that when you said that the agency wants to wait to see where the legislation goes and is supportive of the legislation, if that is true then I urge you to go back to the people you negotiated with and the judge and put off the final rule for nine to twelve months. And then thereby, let the legislation take its course to see where it is going to go. If it goes nowhere, come back in with your proposed rule.

Meanwhile, you have time to comment on your proposed legislation and help to shape it as the agency would like to see it shaped. I find the time table that has been established most objectionable, and I am certain that steps could be made if there was a will to go ahead and not subvert the legislative process by adhering to the time table but rather change the time table and let it go forward.

DR. ROSENBERG: A couple of things. First of all, what I said is we have to meet that specific time table. We have made an agreement on that time table, and we made it sometime ago, that we would produce a final rule by May. I am in no way implying that it is impossible to reopen negotiations, but any negotiations obviously have to be time certain. And that is a possibility that we have already discussed and explored a little bit. But there is no predictable outcome for that, so people should not expect that the time table should be extended.

Yes, we made that agreement. And it seemed like it was a reasonable agreement for a number of reasons. Even though it is difficult on Rebecca and her staff to meet the time table, and all time tables are in some sense unreasonable given the resource constraints of the agency, our mandate is to deal with the specific conservation issues that were raised when we withdrew the previous closed area proposal for protecting small fish.

The legislative process obviously is extremely unpredictable in terms of its timing. There is not the need that our rule making process subvert the legislative process as you put it. That is not necessary, and it is not necessarily the result. There is no reason why the legislative process for a buy-out proposal cannot move forward on whatever time table they can accomplish, and our rule making move forward on whatever time table we are required to meet. So they are not mutually exclusive. That if we meet our current time table, the legislation no longer has any impact or effect. Of course, it does.

But our mandate is to try to achieve the goals that we are trying to achieve with the closed areas in terms of protection of protected resources, a reduction of discards, and protection for small under-sized animals. So I do not disagree with you that it is possible to renegotiate time tables. I am not sure whether that will be successful. It may be helpful. That is not entirely clear to me.

I suspect that what will happen is any renegotiation will also be a difficult time table for the legislative process to meet, but that is not something that we have any influence over or input on frankly, the legislative calendar.

So I think it is unfortunate if people view this as either/or. That is not the case. If we move forward with our rule making, that does not in any way preclude legislation, and should not preclude legislation. And it should not slow it down in any way. And I think that is an unfortunate sort of perception that some people have had.

I have Jim Donofrio again, and then Nelson again.

MR. DONOFRIO: Thanks, Andy. I want to get back to the plane issue, which I was on record myself personally opposed to the use of the planes. Based on my experience as a fisherman up in the northeast area there south of the vineyard and all in that area where I did work my boat, my main contention is that it was a safety at sea issue over anything. Forget about anything else, it is a safety at sea issue.

And the scenario I gave is that we have a lot of fog up there on days, and a plane may be spotted circling. And the whole fleet, whether you are paying that plane or not, the whole fleet knows that there is a school of bluefin tuna. And what happens is that they all throttle up and head for that area.

Now what I am saying is that rules of the road do not exist. Now under federal law, I know that we have a Magnuson Act and you are talking about allocation and national standards. And I know that we have a Coast Guard officer here.

Doesn't safety at sea go before any kind of allocation and any of Magnuson considerations? This should be a no brainer for this judge.

DR. ROSENBERG: No, it does not go before. There is a national standard that deals with safety at sea specifically. But if you say does it go before and override any allocative decisions, the answer is no. Because, of course, if that were the case, and safety at sea was the primary concern and protection of that overrode everything, then you probably would not allow the fishery. So it cannot work in that way.

It is a concern, and it is an argument that we have heard before, and have utilized I believe in the spotter plane discussion in terms of safety with boats converging. I think it is in there, as I recall. It is an important argument, and it does not override any other concern. Obviously, for an individual operation, the Coast Guard will take safety first in an individual situation. But in terms of writing rules, does it override Magnuson concerns, no. It is part of the Magnuson national standards.

MR. DONOFRIO: Wait, let me finish this now. Because now what you are saying to me, because I still have my 100 ton operator's license, you are saying to me that if I am fishing and I have an opportunity to cut a boat off and violate the international rules of the road, I can do that.

DR. ROSENBERG: I never said anything approximately like that, Jim.

MR. DONOFRIO: Well, you just implied that.

DR. ROSENBERG: That is ridiculous.

MR. DONOFRIO: That is what I just heard.

DR. ROSENBERG: No, I did not say anything like that. So let's try again. That is ridiculous. I did not say that in an individual case that you just waive the rules of the road, because it matters more that you get to the fish than whoever you run over. What I said is that it does not override in developing a fishery management plan the requirements for conservation, the requirements for allocation be made fairly, the requirements to minimize bycatch or anything else. You cannot write a rule that just says well, the heck with that, we can just fish ab libium because we have decided that is the safest thing to do. It does not work that way.

Now obviously, in an individual situation, if you are going to put other people at danger, then first of all, you should not do it, because you have your license and the Coast Guard should pull it if you did. And secondly, of course, they can order you out of an unsafe situation, I believe. This is your law, it is not mine, Mark.

But you are talking about a management planning process and justification for a particular set of rules. Yes, safety at sea is a concern and can be brought into the argument on banning spotter planes. If we believe that allowing planes to continue as they are currently ruled undermines safety at sea as a general provision, again we have brought that into the argument. But it does not override all of the other national standards.

In fact, the only one that overrides the national standards in any sense is the national standard that says you must conserve and manage, and it takes precedent. But that does not mean that it overrides everything else in that same way as you described in your example.

A PARTICIPANT: But that is exactly what happens. This having the plane rule creates a situation where there is no burdened or privileged vessel anymore. That part of the international rules is gone. It is he who gets to the fish first wins. So tell me.

If the rule is going to create breaking international rules of navigation, would that not be the precedent for just eliminating it?

DR. ROSENBERG: No.

A PARTICIPANT: No?

DR. ROSENBERG: No. Because the rules do not require you to break international rules of navigation. If somebody does that foolishly and put themselves at danger and puts other people at danger, it is not because they have to according to our rules. That is ridiculous. There is nothing in the management plan that says, "And by the way, when you are out there, make sure you hit everybody you can." It tells you to obey all of the rules. If people do not follow them, are you saying is that a problem? Yes. People should follow the rules of the road, and be as safe as they possibly can. Let me get back to Hammer.

MR. BEIDEMAN: Thank you, Andy. First off, I would like to say that I do and Blue Water does share Jack's perspective and concerns. But not to belabor that, more importantly, I want to get some minimizing socioeconomic disruption onto the record, especially while yourself and Gary are present. I will try to do it as general as possible. And, of course, we will be more detailed in our comment, and perhaps the discussions this afternoon.

But we have got a situation, and this applies both to the BMS requirement that is required by June, and the proposed rule. And the situation is that we have three different processes that are taking place. We have got the regulatory, and we have got the congressional, and we have got core data aspects. And there is a lot of good hard working American fishing families that are getting squeezed in the middle of these processes.

And if I could, I would like to give you a couple of examples, such as on the VMS. Boats are not going out buying VMS right now. They are waiting to see what happens with the three processes involved in that situation. On the proposed rule, God forbid, if the rule is finalized, it will socioeconomically impact all affected vessels. There are about 102 vessels that have recent years participated in those closed areas.

A large number of those vessels will have to figure out how to uproot their home bases and procure housing, you know, rent, buy, what have you in other regions of the country. And set up their children in schools, you know, new schools and different schools. And set up medical facilities, and religious facilities, et cetera. The related businesses, the same thing. Some of the related businesses are going to have to pick up their homes and move to other regions of the country, et cetera, et cetera.

The processes themselves are creating some problems. Even American fishing families that will comply strictly with the rules whatever does come out, they are getting caught in the middle here. It is not right, and it is not fair. And I hope that the agency takes a full account of those types of things. And I know you have asked for comments on how to minimize socioeconomic impacts. One way is considering that these families would need, families and businesses, would need at least a year lapse between finalization and implementation of the rule. I think that would be a minimum.

And there also needs to be consideration, especially because it comes into additional economic impacts of extending the VMS until we know what is going on and things get settled out. I would love to discuss those aspects in more detail whenever, but I think that it is very, very important.

A second thing is we have been very, very concerned about all of the differences in the scientific percentages and whatnot that have been coming out. In Penny's testimony and in our stuff, we all have got different numbers. And supposedly, we are all working with the same pelagic long line database that comes out of the Southeast Fisheries Science Center.

From what we understand, there has been an internal scientific review. Please place on the record that we would like to see that internal scientific review, and let us know if we need to do FOIA, or congressional requests, or what have you to receive that. Thank you, Andy.

DR. ROSENBERG: Sure. To the first of it, I understand the concerns, and your points are well taken between the three processes that are going on, which believe it or not were not set up by the National Marine Fisheries Service, but actually are set up in the Constitution, the courts, the Congress, and the administration. And that is a difficult circumstance, but that is the constitutional government that we live under.

There is little we can do about pulling those processes together. But I think your comments about at least the agency trying to bring them closer together and things that I hear, I will see if there is a way to do that.

With regard to the last point -- well, on VMS, I think that VMS has been proposed for a year and a half. It has been on the table for a year.

A PARTICIPANT: (Inaudible.)

DR. ROSENBERG: It has been about a year. But again, your comments, I appreciate the comments. It is not a brand new proposal. Obviously, there was some discussion before it was formally put in place with a one year delay. But this is a discussion that has been had in a number of other fora, for example, in the New England Council and so on.

With regard to the numbers, I think that the question in terms of percentages, first of all, we are working out of a technical report that I think you all have available with regard to the closed areas. The real issue with regard to percentages is how you account for the displacement of effort. And that is where you get differences in the numbers.

If you assume that you close the areas and all of the boats evaporate and are not going to fish anywhere else, then you obviously get one picture. If you assume that the boats are able to go and fish somewhere else, then you get a different picture. And it depends on how you allocate that effort to other areas. And that is standard in every closed area analysis, that you have to essentially try to bound the range of possibilities by looking at a so-called no displacement model assuming the boats do not fish anywhere else, and in a displacement model assuming that the boats do fish somewhere else.

And obviously, some boats will and some boats will not. And you cannot predict that perfectly. That is the discrepancy in the numbers that I know you have been using, and both sets of numbers are contained in our documents.

With regard to the internal review, I am not sure. Yes, we did ask people to review methodology, but I am not sure that we did a review report. If we did, I do not see it, but presumably it is available. I think that we basically just consulted people with comments about methodology particularly with regard to that displacement issue. And I will find out what there is for written material. I just do not know. We will have to look at what the situation is there, and I will get back to you. Steve Loga.

MR. LOGA: Hi, Andy. Steve Loga with Tuna Fresh. I seem to have lost my voice overnight. My question is concerning the western Gulf of Mexico proposal and the proposed rule. The Magnuson Act specifically states that we need to minimize bycatch to the extent practicable. In that western Gulf area, it accounts for less than one percent of the total U.S. bycatch on billfish as reported to ICCAT each year. But it also accounts for 72 percent of the Gulf landing of yellowfin tuna, which is the targeted fishery in that area.

And it also means a lot to our state. Preliminary estimates say that it is as much as a \$100 million a year fishery to the economic of Louisiana. And I just

do not know if NMFS has looked at this, and felt that this is minimizing bycatch to the extent practicable. And we are sacrificing 72 percent of the Gulf's landing of the yellowfin tuna, which is a very clean fishery to save less than one percent of the billfish in that area.

DR. ROSENBERG: I think you need to remember and the difficulty in doing the analysis is that this is not just minimizing billfish bycatch, but it is minimizing bycatches of small tunas, and turtles, and all kinds of other things. So it is necessarily the case that you cannot optimize or minimize on multiple objectives at the same time.

The answer is yes, absolutely. We have looked at bycatch overall and minimizing bycatch. Each of the different proposals, as you have seen in the technical documents, have different results in terms of what we would expect the reduction in bycatch for different species would be.

Your comments are important and well taken, particularly if you would suggest an alternative that would work better in terms of minimizing bycatch for all of the various species that are considered in the HMS plan, as well as all of the protected species. So if you look at the tables and you say well, but it does not minimize bycatch of that species as well as this other proposal, that does not actually help very much because you are trying to do this balancing act for all of the species.

So I am not disagreeing with you in terms of your comments other than to say please remember to look at all of the species. And again, when you comment, an alternative proposal would be helpful. And why that does a better job of balancing up the bycatch reductions for all of those species.

MR. LOGA: In saying that, the legislation which we have proposed right now is a lot more than just a buy-out. In fact, the buy-out probably only exists for maybe six or eight boats in the Gulf of Mexico. But what that legislation does do is close an area off of the Minnesota canyons that is a hot spot for a bycatch of juvenile swordfish. And it also allows for an experimental fishery not that I am conducting, but that scientific study on how to minimize bycatch in the long line fishery.

So I think that the legislation has a lot of merits, and it is a lot more than just a buy-out that everyone seems to think that it is.

DR. ROSENBERG: Right. And I am not under the misapprehension that it is just a buy-out either. Again, I would go back to Hammer's comments. There are three things happening here, again as set up by the Constitution. While we support in concept the things that the legislation is trying to do, that does not abrogate our responsibility to move forward with the rule making that we need to do.

The legislation can do stuff that we cannot do. In fact, it can do lots of things that we actually cannot do under the law. Because remember, we have to justify all of our actions under the NEPA and Magnuson Act. And the legislation, of course, does not have to justify. They are not creating an administrative record in that sense.

So I do not disagree that there are lots of things in the legislation, and that would be important. On the other hand, it is also not predictable what the legislative course might be. And we have to still move forward with our mandates.

I have got a few more people on this, and I also have a few people who are repeats. But what is the timing like?

MS. LENT: It is getting a little tight. Mau, can you hold off for awhile. You are next on the list.

MR. CLAVERIE: Rebecca, I pass or I yield my time to the gentleman on my right.

DR. ROSENBERG: Actually, Gail was next, so let me go to Gail. How are you doing, Gail? I have not seen you in awhile.

MS. JOHNSON: Fine. Thanks, Andy. It is good to see you here. Two things. First of all, on the three pronged approach as it were coming towards us, there is another avenue. There is ample precedent for completing a final rule. But often, well not that often, but often sometimes NMFS has needed to delay implementation of the final rules. And there is precedent and there may be very good reason for it this time.

The second thing is that on the VMS, for our boat, we have a problem that probably will affect other boats in this northern area. And that is that when VMS for pelagics goes into effect, there are two service providers authorized, and I believe three actual black boxes authorized.

Well, we also have a ground fish permit, and VMS is required for that. And guess what? None of the VMS that worked for pelagics worked for ground fish or apparently for scallops which we would not use. And I need to put it on the record that you have to address that, because it is unreasonable to expect two things in terms of cost. And also, practically speaking, the wheel houses on the older boats like ours, thirty years old almost, there is no room. We are maxed out for antennas as well as boxes. Thank you.

DR. ROSENBERG: Thanks, Gail. To save time, I will not respond. We have thought about, of course, delayed implementation, and other people have raised that. And your comment is a good one, as well as the issue of conflicting VMS requirements, even though the ground fish requirement is not currently implemented. Let me go to Bob Zales, because I think I skipped you before, Bob. Sorry.

MR. ZALES: Mine is not so much as has been discussed, but it is more about procedure. We hear consistently about the Fishery Service is supposed to be more user friendly so to speak to the public, and do everything they can do to let everybody know what is going on.

The public hearing process for this time/area closure process in Panama City, Florida was the most poor performance of public notification that I have ever seen.

(End side B, tape 1.)

MR. ZALES: I brought that to the attention at the public hearing in Panama City, and I brought it to the council's attention. And I guess that being you are the second man in charge, I am going to bring it to you. As an agency, you do what is legal. You put it in the Federal Register, but not all of us look at a Federal Register every day. You need to do more. You need to send things out to the public, and do everything you can do to get to the public to let them know.

As an example in Panama City, Florida, the way most people found out in Panama City about the public hearing day was through me. And the only reason that they found out through me is because I happened to be on the fax network, and happened to be a member of this panel to get there. The newspaper found out from me.

And the reason why I bring this up is because the Gulf Council does an excellent job of notifying people about issues that come before that council. The southeast region, Dr. Horgarth is doing a real good job about notifying people that come up for fisheries issues for NMFS in that region. You have a network out there that all you have to do is go to the council, go to Dr. Horgarth, and find out their sources of notification, and send it through them so they can get the stuff out there.

The newspaper in Panama City is not obligated to print what you all send them. But if you do not send them anything, they do not have any options to do. And I would suggest that you do a little bit more to get this information out.

DR. ROSENBERG: Thank you for the comment. We did mail notices to permit holders. And, of course, it is the same list that Bill Horgarth has, the fax network, which goes to all of you. It is a huge network, and it goes to the council. We did send faxes to the newspapers. I have no idea why they did not print it, or why they tell you they did not get it unless their fax machine did not work.

Obviously, apologies if for some reason that notice did not get out, or the mail did not arrive, or the faxes did not work. But as I recall, there is some huge number of people on the fax network. It is hundreds. It is not just the advisory panel. So I am a little puzzled as to what has happened. We will look into it, and find out why the people did not see the notice or did not pay attention to the notice. I will also double check and make sure that we sent one to the newspaper in Panama City, because they are on our media list. In fact, I think we did two media notices in this case, which is a fax out to all of the various media outlets.

MR. ZALES: Just to respond. The girl who does the stuff for the New Herald in Panama City, I specifically talked to her and questioned her. She did not have any idea that the fax network even existed. If she is on there now, I do not know. When you send them out, I get three copies. For some reason or another, I am on that thing three times. They burn my fax machine up with notices. So if you are on that list, you get it. But you have to ask to be on it. And if you do not know to ask to be on it, you do not know about it.

DR. ROSENBERG: Again, there are hundreds of people on the list. And all of the permit holders get it by mail whether they ask to get it or not. So I do not know what happened in that case. It is obviously a problem or of concern. We will call the Panama City paper and find out why they did not get it. Or if they did get it, why they did not know what they got, and figure out what happened there. Let me go to Dave Wilmot.

MR. WILMOT: Good morning, Andy. Just a quick comment and one question, so you do not feel unwanted when you leave, and you were not at the hearing the other day. There are folks around the table who are very pleased to see NMFS moving forward with their obligations and responsibility. And while the proposed rule is not perfect, we are extremely happy and will be making many more comments about that this morning.

My question is does NMFS have a plan to secure part of this wonderful surplus that everyone talks about in this election year for research, and monitoring, and enforcement? I mean there are so many very important issues with rebuilding plans and bycatch reduction that we all care about and debate about for hours. But I think that if we did talk about some of the research and enforcement issues more, that we would have a real consensus around this table.

Is there a plan to get more money? We know that it is under funded, and I would like to hear a response.

DR. ROSENBERG: Thanks, David. Obviously, the president's budget came out on Monday, and we are doing budget briefings on the Hill, and did the constituents briefing this week. Within the president's budget, there is increased enforcement money. There is also increased stock assessment and research money. You should ask me -- but if you do not want to, I will just do it for you -- is that sufficient to meet the needs for the various plans.

And obviously, with competing budget priorities, we did not get money that is nearly going to cover all of the needs. But there is an increase of \$4.5 million for enforcement. Some of it is for things like VMS implementation. There is increased observer coverage. I think that is \$3.6 million nationwide,

but most of that goes to West Coast ground fish, \$2.3 million of that goes to West Coast ground fish.

There is increased stock assessment money, and money for social and economic data collection overall for the social and economic data collection. My memory is about \$3.5 million. For the stock assessment information, there is about \$2.7 million for just increasing annual assessments. There is also some additional sea time. These are all pieces that help.

Overall, probably one of the most important things that we are hoping for in this budget that has not appeared in a lot of other budgets that most people do not pay attention to is for the first time in five years that we hope that we will receive adjustments to base. We have received no inflationary increases for five years.

What happens is everybody says we have a new initiative, and we are going to give you a million dollars to do new stock assessment or enforcement work. Well, given that we have a congressionally mandated pay increase of 4.8 percent and we have increases in rent and all of the other increases that you all experience in your businesses, as well as people moving up, and promotions and all of that sort of stuff that happens in a large organization, most of that goes just to try to stay even.

This year, we are asking specifically for adjustments to base, which would allow us not to use all of the new initiative money just to pay must pay bills, our required costs.

So the answer is yes, but we are not going to have the ability to do all of the things that people want even in HMS fisheries let alone all of the fisheries around the country.

I am going to hit the people who have not had a chance to say anything. Are you taking a break after this?

MS. LENT: Yes.

DR. ROSENBERG: And then maybe other people can ask me something on break while everybody else gets coffee. Bob Spaeth, I guess was next.

MR. SPAETH: I was asked to bring this up as maybe a potential solution or compromise here in the interim. I do like Gail maybe not going forward with the rule but not enacting it for a year or so.

But if that cannot be done, what about the possibility of going back all the way to the original small area prior to the three plans here that I thought was agreed upon which start reducing the bycatch problem. And as I understood it, what happened with this program was that the public hearing and special interest groups kept expanding the area in the South Atlantic over a period of time, and this area grew and grew.

What can we not go back to the original area, put that into effect; and then if you let the legislation run its progress, and then by framework procedures or something, expand the area?

DR. ROSENBERG: I think the short answer to the question is because we concluded in the rule making process before that the small area was insufficient, and really did not meet any of the needs. It was too small to actually have any impact. We have no basis now for saying well, we have changed our minds, because that is what the analysis showed, both based on the scientific analysis as well as on the comments.

In terms of the expansion of the area, I think that everybody here around the table has a special interest. So there has been extensive discussion of what

the areas would be. There was extensive discussion of those small areas before. And I think that it was pretty widely recognized that they really did not do the job or any particular job. And while they had an impact in a very small location on a number of fishermen, they did not really do anything in terms of conservation.

So I do not think that we are going to go back to those. I heard your comment that you thought that Gail's idea was useful, and obviously we will be considering that over time. Russ Nelson was next.

MR. NELSON: I do not know how many more people you have on your list, Andy. And I do not want to downplay the therapeutic value of this wide ranging constituent chat, but we seem to be moving more and more towards a focus on the proposed area closures. Are we on that part of the agenda now, or are we going to get back to the agenda before lunch?

MS. LENT: (Inaudible.)

MR. NELSON: Okay.

DR. ROSENBERG: John Jolly.

MR. JOLLY: Yes. We have not met. I am John Jolly, and I represent the recreational sector of the West Palm Beach Fish Club. I am afraid that my question relates back to this closure thing in the legislation. I wonder if you could clarify something for me. I was led to believe that this legislation that is being proposed would not preclude NMFS from further regulations.

And specifically, if you felt that it was necessary to take some further steps, that really what you were being precluded from doing was adjusting the area, but not working with bycatch quotas, gear modifications, changing, and fishing techniques, and that sort of thing. I would like to get that clarified for the panel.

DR. ROSENBERG: That is correct. And frankly, I do not know if all of the least four legislative proposals are the same in that regard. But they are talking about simply not adjusting the areas. But again, we have consistently opposed abrogating our authority to modify management measures given new information, but you are correct in your interpretation. Irby Basco.

MR. BASCO: I am not going to talk about time/ area closure right now. But the comment that I wanted to make was about what Bob was talking about, getting the word out to the general public. Whenever I chair a meeting from the Coast Gulf Council, what I do is I call the local newspaper and tell them. And they will be gracious enough, and they always have run another notice in the paper that the meeting is taking place. And after that, I even contact some of the people in the area who I think would be interested like some charter boat fleet or whatever it may be, commercial fishermen, and tell them about this. And this is how I enhance.

And I think that it should be incumbent on all of the council chairs of these meetings that do this and help NMFS get the word out that we need to have people there, and we need their comments on these different issues. So I just wanted to put that in. Thank you.

DR. ROSENBERG: Thanks. Again, we will keep looking at things. We do send the notices to the council, and we do the media faxes. I am not sure whether public affairs does media calls in addition to the fax notification, but anyway.

MR. WHITAKER: My question is just pertaining to the tagging program. And my reason for the question is that I am required by federal law if I am releasing bluefin tunas to have a National Marine Fisheries Service tagging kit aboard my vessel. And I called Eric Prince down in the Florida office to order tags about two or three weeks ago. And he said that there were none available, and he had

not had any for three months.

And I am just wondering whether this program, is this a temporary thing, or are they going to do away with the program?

DR. ROSENBERG: Rebecca says that tags have been ordered. So apparently, we were waiting on funding for that. But they have ordered tags, so they should be getting in new tags shortly.

I skipped a couple of people. Joe, you had another comment again. And Jack, you had another comment. And Sonya, I guess, did not get a chance to speak. I do not know if you have a burning issue for the whole group, or if we can talk for a minute after we take a break. And Jack, is that okay with you, or do you have something that you need to say for the group?

A PARTICIPANT: (Inaudible.)

MS. LENT: The mike.

DR. ROSENBERG: Just go ahead.

MR. DEVNEU: Just real quickly, and it does not require a response. My name is Jack Devneu. And this comment also is a personal comment as part of the process, and not representative of the Blue Water Fishery Association.

My comment is that I keep hearing, and it gets repeated over and over, not just today by you, Andy, but by others, that the agency has mandates, and is required by law to do this, that, and the other thing. The first comment is that there is more than Magnuson at stake here. We have the Atlantic Tunas Convention Act, and what that brings to the table.

But more importantly is very often the agency creates its own mandate in law. And a case in point is the decision to negotiate a stay with the plaintiff on the proposed rule. That decision was not imposed. You could have defended that case, and you could have defended it successfully. I have no doubt in my mind. The decision to negotiate a stay was a political act, and not a legal act. And I just want to make that clear.

There are a variety of times when the agency makes a decision that then creates a mandate. That decision at that moment, the way it goes, is political pure and simple.

DR. ROSENBERG: Thank you. We fundamentally disagree on that point, just so everybody is clear about that. I think it is ridiculous. It is not correct about how we made that decision, and why we made that decision, or that we created a mandate. But we decide how to address our mandates, as you all do address your business mandates. And somebody else might come to a different decision, but you are not in the position to make that decision at a particular time. So we do fundamentally disagree there. Thanks for the comment. Sonya, you get the last word.

MS. FORDHAM: I want to again thank you and NMFS for your leadership in obtaining the FAO plan of action for sharks. And I know that the United States is working on a national plan, and that the outline has come out. And I wonder if you have any information for the group on the time line for comment and development of this plan.

MS. LENT: Right now, Sonya, the plan is under internal review. We do plan to put it out for public review, we hope within a month or less. And we will do a wide announcement on that, put it on the fax network, and we will call Panama City.

DR. ROSENBERG: Thank you all very much. I appreciated the comments, even if

sometimes we disagree. They are always interesting and helpful to me in trying to understand the issues, and I wish you all a good meeting. Thanks.

MS. LENT: Thank you very much, Andy. What I would like to do so we can get back to the agenda is just have Pat present a few more notes regarding bluefin tuna. I would like to close the bluefin tuna subject at that time, and move into time/area after a short break. And then I would suggest that at lunch time that those who want to continue discussing the bluefin issue bring a sandwich back here. There is a cafeteria right next door, and we can continue discussing that.

Are there any comments on that suggestion for the agenda? Nelson, quickly.

MR. BEIDEMAN: I would support that, but I would also support making sure that the bay's enforcement issues get some time on the agenda this afternoon or tomorrow.

MS. LENT: Thanks for that reminder, Nelson. We will get back to that issue. Quickly, so we can move on, Rich.

MR. RUAIS: I am not real happy with the idea of a partial AP talking about the bluefin issues. There are a fair number of issues that we want to talk about under the general category of effort controls. And I would like to be able to spend the time on it with the whole AP, if that is possible.

MS. LENT: We will encourage people to come, if they can, to lunch. There should be no reason why you cannot come back. We just have a really tight schedule. I did not want to cut you off when you had the opportunity to talk to WAA. But at the same time, we have to rebudget some of the time that is left. Okay. So Pat, you can spend a few minutes. And then we will go to a quick break, ten minutes, and come back and to the time/area.

MR. CHETA: Thanks, Rebecca. Not even a couple of minutes. I just wanted to kind of talk about what maybe the next steps are that we are looking to do within the next month or so, or the next couple of months.

The annual specs for the 2000 fishing year, including quotas for all of the various categories and the general category effort controls, the quota subdivisions, and the restricted fishing days, we are probably going to be coming out with proposals for those within the next month or so. That is one of the things that we could discuss at lunch. And also, looking for input on the angling category issues that we talked about, about moving the line. We heard some comments earlier. And also, about what the season could look like.

We have an additional quota this year, it looks like, which is going to be left over from 1999 into 2000. If we want to have an extended season with similar bag limits or if we want to perhaps have higher bag limits under a similar time period, those are things that we can discuss, and those are options that are available to us. So we could discuss those issues at lunch. I will be available then. I know we have to move on. Thank you.

MS. LENT: Rich, do you need to ask a quick question quickly?

MR. RUAIS: I do. It is the issue of when are we going to get some sort of a little bit of a report on what happened with that bridge quota period, and where all of that quota went. I thought that was going to happen under this agenda item.

MR. CHETA: We could talk about it at lunch a little bit more. But briefly, the bridge quota really had to do with the fisheries that were taking place during January through May.

A PARTICIPANT: (Inaudible.)

MR. CHETA: Right. To my best recollection, and we could talk about it more at lunch, there were underages in each of those. We had some quota that was available for both of those categories from the previous year, which we used for the bridge period quota, the transition quota period. And there continue to be underages in those, which would be moved into the 2000 fishing year.

MR. RUAIS: So there was the 1998 quota that was used in 1999 to finish up the now extended 1998 fishing year.

MR. CHETA: Right.

MR. RUAIS: And there were underages in those two sub-quotas that were provided for the long line incidental and for the angling.

MR. CHETA: Right.

MR. RUAIS: And what I am interested in seeing is what are the numbers, and what was rolled over into the 1999 fishing year, and what is likely to now be available in 2000.

MR. CHETA: Okay. We did publish a Federal Register notice on that for the bridge period, exactly what the quotas were, and for establishing the quotas for 1999. In the handout are the adjusted quotas for 1999. There is a handout which has no letterhead on it, and a memo to Rebecca from Mark Murray-Brown. And that has the adjusted 1999 quotas on it. The middle column is the adjusted quota three, and it has the various quotas for the different categories. Except for the angling, which is in the separate table in the handouts. So what is not in here is what the bridge period quota was.

And we could talk about that at lunch, Rich. I will make sure I get those for you. But there was a separate Federal Register notices that had all of those numbers on it, which went into establishing these adjusted quotas for 1999. And we could bring a copy of that Federal Register notice along with the tables and bring them over.

MS. LENT: All right. I suggest that we take a break now, and come back at 10:15. And we will start talking about the time/area closures. Thank you.

(A brief recess was taken.)

A PARTICIPANT: (Inaudible) and Ocean Subcommittee in the House. I just wanted to bring people up to speed on some of the legislative initiatives that have been working their way through the process. I am just going to really concentrate really briefly on what occurred the other day in our hearing. The House Subcommittee had a hearing on three legislative proposals in the House. Mr. Saxon's bill, H.R. 3331. And Mr. Goss' and Mr. Tauzin's bill, H.R. 3390, which is the companion bill to the one in the Senate, which is S.1991 sponsored by Mr. Breaux and Ms. Snow. And the final bill is H.R. 3516 sponsored by Mr. Sanford of South Carolina.

Mr. Sanford's bill is a bit different than the other legislative proposals in that there is no associated buy-out. It would simply prohibit pelagic long line gear to be used in the EEZ in the Atlantic.

The majority of the hearing concentrated on 3331 and 3390, in addition to the National Marine Fisheries Service's proposal that was published in the Register on December 15th, which I am sure you are all well aware of.

At the hearing, we had the administration, Congressman Goss, and a third panel of witnesses, both representing the long line industry, the recreational industry, and the environmental community. In short, the hearing did not go in the direction that Mr. Saxon had hoped it would have. To him, it was evident that the parties that were asked to testify had their positions laid out. And

while there were one or two opportunities for coming to the middle, the majority of the issues that are outstanding, there seemed to be a reluctance on all parties to come to the middle.

And for those here in the room that were at the hearing or at the panel, you know that with Mr. Saxon's comment after the break, where there was thirty seconds of silence by the panelists obviously, he showed his frustration. And that is unlike him.

We had originally had a field hearing scheduled for Fort Lauderdale for February 23rd. Due to some scheduling conflicts with Mr. Saxon and Mr. Goss, it is being postponed. We hope to reschedule it as soon as possible. Mr. Saxon would like to have the field hearing.

I guess that I have not talked to him extensively since the hearing, but he is frustrated. He knows not only do the legislative initiatives have a lot of support in one sense or the other, but there is also a proposal out there by the National Marine Fisheries Service that people have concerns with as well.

So all I can tell you is that we are hoping to still move forward. I probably will be having meetings with various stakeholders in the coming weeks to move forward on this. So I guess that is basically it.

In terms of if there is anybody possibly here who does not know what the basis of these legislative initiatives are, I will do it really briefly. Both 331, Mr. Saxon; 3390, Mr. Goss and Mr. Tauzin; and S.1911, Mr. Brow's and Ms. Snow's bill, they are very similar. The difference of the three bills frankly is Mr. Saxon's bill, 3331. He has added three provisions to the original text that was presented by the Coalition of the industry and recreational organizations.

Most of his additions have to do with the region known as the Mid-Atlantic bite. Essentially, all of the bills do incorporate time/area closures in the Gulf, permanent closures in the South Atlantic, complemented with a buy-out of eligible vessels. It is a voluntary buy-out of those eligible vessels affected directly by the permanent closure in the South Atlantic. It also has an extensive research program as part of the ongoing effort to reduce by catch, and various ways to improve the use of long line gear to reduce by catch.

And there are also some other provisions having to do with appropriations, and a time-out provision in terms of not permitting or allowing further time/area closures without evidence, science, and discussion, if you will. There are a broad base of stakeholders out there that support both, either/or, or none, as well as the proposal that you are all probably talking about today.

Needless to say, it did not go as well as we expected. We did not expect a total solution, but Mr. Saxon was hopeful for a little more movement forward. So be prepared to hear from me. You know who you are. And we will let you know where we go. So with that, thank you very much for the opportunity. And I will be hanging around probably for about another hour, and then I will have to take off, if anybody has any questions. Thank you.

MS. LENT: Thank you.

MR. MATLOCK: I am Gary Matlock, and I am the director of the office of sustainable fisheries within NMFS. And thank you, Rob, very much for your comments. Again, he is available if you have any comments or questions to offer him.

For those of you who might not know me, and those of you who are new to our panel, let me first welcome you. It is a bit late, and I am sorry that I could not be here yesterday. But it is a pleasure to have you here, and to be soliciting your input and your comments on the topics on our agenda.

This is not a meeting from our standpoint where we are trying from the NMFS

perspective to tell you what it is that you should or should not be doing. Instead it is a meeting for you to give us your thoughts and your comments on these various topics. And we do pay attention to them. It is important therefore in making sure that we know who has said what that you tell us who you are before you speak, so we can be sure that our records of the meeting are accurate. So if you can remember as you talk, it is a bit difficult, and I may interrupt you to try to make sure we know who you are as you talk, to please say your name. It would be very much appreciated.

Rebecca is going to try to take as much detailed information down as she can while not running the meeting the such or not facilitating it, and she has asked me to try to make sure that we get everybody recognized for whatever you might want to say, and she can pay that more attention to what you have to say.

With that, the topic now before us is the time/area closures. And we do not really have any presentation at this point or comments to offer you. I think that everyone pretty well knows the state of play and what activities are occurring. So what we would like to do is turn it over to you, and get your comments, thoughts, questions, criticisms, suggestions, and whatever else you might have to offer. So with that, we will start with Russ and Jim.

MR. NELSON: Thank you, Gary. I guess I have a question basically as to process. In the development of the last set of amendments to the HMS and the billfish plan, these two Advisory Panels sort of had a clear process set before them. In one case, the HMS panel had a facilitator who tried to lead it towards a consensus or an expression of its divergent views on each particular issue. And the Billfish Advisory Panel worked under a chair and came to votes on particular issues where there was not consensus.

I am having a bit of a difficulty figuring out how Rebecca is going to extract the guidance being offered by this Advisory Panel. Thus far, we have been engaging solely in wide ranging and free form discussions, wherein each and every individual has offered their separate opinion on things. I do not see how the panels themselves are being asked to come up with either consensus or majority views here. It seems to be very loose and very unstructured. And in fact, a process which I suggest would almost allow the extraction of any particular piece of advice offered by any individual. So I am just wondering what is the process here.

MR. MATLOCK: Well, let me give a stab at it. From our perspective, it is as important to get the basis for whatever kind of position that the panel or panels may want to take on a particular issue as it is to get what that position is. As Andy indicated while he was speaking, to simply have the Advisory Panel say that we would like to see so and so happen is not very helpful. But to have the collective basis upon which that so and so should happen is extremely helpful.

To the extent that I can, at least in the time that we have allocated between now and about 12:30 when I have to leave, dealing with time/area closures, we will attempt to get a consensus of the two panels. We are not going to take votes, so there is no majority position that we are going to try to obtain.

But to the extent that we can get a consensus from the Billfish Panel and the HMS Panel on a particular aspect of the discussion, I will try to do that. And I will try to do it in a way that I have been trained and have done in several other meetings. And that is pretty much to summarize at some appropriate point in the discussion what the positions are, and see if there is a collective position that can be developed that people will agree to.

To the extent that that cannot be done, I do not intend to belabor the discussion simply to get to a consensus, but do intend to try to get as much information out of the discussion as we possibly can. I do not know if that is very helpful or not, Russ, but that was my intention as I sat down here.

MR. NELSON: Well, not being at all inclined to pre-judge your efforts, we will proceed forward. But I do suggest that at least the possibility exists here that how this process has been set up, that it may to some extent be minimizing the effectiveness of these two different groups that were put together under a congressional mandate. But again, I am going to put my seat belt on, Gary, and let you rock.

MR. MATLOCK: Well, I appreciate that. One of the things that I would hope that we would not do is spend the time available to us talking about a process to get to some end, or to get the information. So my intention would not be to belabor that particular aspect, but to get on to the issue at hand. With that, Jim Donofrio, you were next.

MR. DONOFRIO: Thank you, Gary. Gary, I am hopeful that NMFS will move forward with their proposal here. But at the same time, I realize that we are going to need some legislation to address and mitigate the buy-out part of that. And we are supporting that, of course, with Mr. Saxon. And we had some ideas that I would like to throw up also to the Advisory Panel.

As you know, we have the \$25 highly migratory permit which was raised from \$18. Most of our people always saw this as a valueless tax, valueless, because it went into the general fund. There was not benefit to paying \$25 to go fish for HMS species. I would like to see that this license be turned into a directed fund through legislation, of course, and maybe help work through your congressional liaison office, and use that for the buy-out. Because then there is benefit to us. There is benefit to the recreational sector. We have to pay it anyway. We feel that compliance is way low. I think that we probably have a lot more vessels in this fishery than are complying with the law. They just see it as valueless, so they are not complying. And as you know, there is not much enforcement. So it is very difficult to count the boats. I think that it would give us a more accurate count also of what vessels are fishing. It would help you in your data. And also, set up a fund for perpetuity here, which would help with the economics for the long line industry as it gets displaced. Thank you.

MR. MATLOCK: Thank you, Jim. I do not see anybody else rushing to the floor. So this might be an appropriate time for Sebastian. I think you wanted to offer a few comments. Since we do not have folks clamoring to get the floor, perhaps this would be a good time for you to offer your comments.

MR. O'KELLY: Hello. I know many of you. For those I do not, my name is Sebastian O'Kelly. I am the department's ombudsman on fisheries issues in the new position created by Secretary Daly to give him advice and input on various fishery matters that get to his level. And I just want to give a quick hello. If people want to come around and talk to me during the break, I will be in and out.

I do not have any comments to say on any specific provisions dealing with these various issues relating to the agency rule making and the legislation considered on the time/area closure. I do think that this is probably the most significant fisheries management issue, or certainly one of the top two or three that NMFS, the department, and Congress will be wrestling with over this next year. So it is really a significant issue.

I am hopeful that in the final analysis that we can have something put in place that addresses the conservation, handles the economic impact, and results in a win-win all round. I know that is very difficult to accomplish in the world of fisheries management given the diverse interests and the sometimes contentious debates. It is something that I push for as much as I can.

Where we can get agreement among sectors, and where people can come together and compromise, I think that is really important. I do not see it happen as often as it should, or that I would like to see it happen. But I really want

to encourage it. I think that within the department that people want to encourage it as well.

I know that there are various and diverse viewpoints, and sometimes it is hard to reach across the divide with people that you are continually in disputes over allocation and management measures, and a whole bunch of other things. But I think it is very important. I really want to place that as an emphasis. I do not have any real comments to add on either the legislation, or the rule making, or the various particular pieces to it. I just want to commend folks for making that effort on this whole subject. So thank you.

MR. MATLOCK: Thank you, Sebastian. Again, he will be available as he said. So if you want to corner him, you are certainly welcome and are encouraged to do so. Joe.

MR. MCBRIDE: Earlier Nelson spoke about the hardships involved in the potential closures, et cetera. I think that many of us, myself included, are on record as stating at the last I believe it was June meeting that when a fishery is to be put out of business by legislation or by regulation, there should be some assistance to the displaced fisherman in one form or another, you know, exactly the specifics of which we did not discuss, I do not think, other than the term buy-out.

Now buy-out, I think, literally means you buy and the boat is out. And I think we said on record last time, if I may again reiterate the position, that if you buy a boat out as they did in New England with many of the ground fishery boats, the boat is out of business, and it is destroyed, et cetera. It cannot be sold in Japan, and it cannot be used in another fishery. And that is fair in my opinion and in the opinion of my associates. That is number one.

Secondly, going back to the economic hardships in regard to some of this regulation. Whereas it is legalism to be concerned with that under the present regulations or present legislation, or whatever term you might want to use, morally to not take a regulation can cause as great a hardship economically as to take a regulation.

For example, many of the northeast head boats because of lack of regulation, let's take the highly migratory species of tuna, are forced to leave their geographic area, and go up to New England and begin to fish for ground fish, and put an extra effort on a threatened species or an over-fished species even up in New England. Because they have taken off the quotas and limitations and the individual bag limits that restrict a head boat fishery. And this is just one simple illustration.

So my point is really being that no legislation or no regulation can cause as great an economic disadvantage to a given geographic area as legislation. I want you to keep that in mind. It is a double edged sword, if I may. Thank you.

MR. MATLOCK: Okay, thank you. I have got Jack, Bob Zales, and Hammer.

MR. DEVNEU: First, I would like to welcome Mr. O'Kelly. I think that it is great that he showed up here for today. And I would also like to express my appreciation to the staff members from congressional offices. I am glad to see their attendance here today at this meeting on this agenda item.

I just had a couple of comments that I wanted to put out there to keep in mind as the discussion on this topic goes forward. First and foremost is that I think it is important to realize that the legislative proposal by blue water and the cooperating parties itself represents a nine month long negotiated procedure. In fact, it represents a compromise that had been reached through an exhaustive and labor intensive process.

We think the bill is outstanding in its present form. It has more resource

conservation bang than anything else out there, principally because it actually retires effort rather than redistributes effort. And it had equity provisions in there for that displacement. It also has got several other things in the proposal which I believe are outstanding, which I do not really need to go into at the moment.

But I think that it is important to keep that in mind. And to view that proposal, the legislative proposal, right now as a starting point in negotiations, I think would be a mistake. It in itself represents a compromise that has been attained at some great consternation by a lot of people.

The other thing that I wanted to make a comment on to keep in mind as we go forward on the discussion is that once again I want to applaud all of the people who have participated in this process to date, because we have in fact a stock that is going in the right direction. And I think that may have been lost here.

The swordfish stock by the last stock assessment is increasing. There has been adopted at ICCAT a ten year rebuilding schedule with a greater than 50 percent likelihood. These are no small matters. There has been a lot of sacrifice to get to this point, and we should all congratulate ourselves on getting here. I think that it is very important that we keep that in mind. We have already achieved very measurable successes in this fishery, and they will go forward in the complete absence of any proposed rule, or legislation, or anything else. We are already going in that direction.

(End side A, tape 2.)

MR. DEVNEU: And to go ahead and put something together like this legislative proposal shows an enormous commitment on behalf of the stakeholders both in the recreational and commercial fisheries to further address and enhance that recovery that is already taking place. So I think that if we bear that in mind that it may be easier to reach a consensus. Thank you.

MR. MATLOCK: Jack, thank you very much. Bob, if I may, before you get the floor. What I would like to do is remind you that the topic that we are trying to focus on with your comments here are the time/area closure prepared rule. The comments that you have to offer on other topics are certainly very helpful and very useful, constructive and worthwhile.

But if you do not give us much comment specifically on our proposed rule, then we are not going to have much from you with which to work to help decide what we do with that proposed rule between now and May 15th. To give you an example of the kind of comment that is very helpful in my opinion on that topic, having a discussion about and seeing if there is a consensus that could be reached, would be the kind of comment that we heard earlier about implementing the rule, but having a delayed effectiveness date.

It was raised several times, as I was standing listening to the discussion earlier. And so knowing what you think as a panel or as two panels about that kind of topic is really the type of information that is very helpful to us. Having the discussion about the legislation in this forum is certainly a discussion that you can have. You are the panel, and you can talk about what you want. But it is not going to be very useful to us frankly in terms of dealing with what NMFS has proposed in the Federal Register on this topic and is the topic of our agenda.

So with that, we have got Bob, Hammer, Irby, Mau, and Steve.

MR. ZALES: To that point. The proposed rule currently that has been made for the Gulf of Mexico to shut down essentially from a little bit west of the mouth of the Mississippi River to Mexico, for us in Florida, Alabama, Mississippi, and the eastern side of Louisiana, that is a big problem.

Because regardless of what the paperwork says that the effort may increase in the Desoto Canyon area or that it may not, and traditionally it has not been fished very hard, what we see is people fishing the western area. And when you tell them that they cannot fish there, they are going to fish someplace, and they are going to concentrate in that area where production has traditionally been low. Because if that is the only place they can fish, that is the only place they are going to fish.

And you are going to create more of a problem for the billfish fishery there. You are going to create in our opinion a tremendous amount of user conflicts, because the time that you are talking about closing this area is in the prime billfishing recreational season, the tournament season and everything else. So you are going to have a concentration of the long line fleet in an area that has traditionally been fished recreationally with very little long line interaction. This is a problem.

It has been suggested by some people, and some of this comes from some of the long liners that I know who fish out of Panama City, that rather than do the closure as proposed, to close from 500 fathoms seaward. Leave 500 fathoms to the beach alone, and only fish in the area from 500 fathoms out across the Gulf.

They seemed to like that a little bit better. That would also be in conjunction with what the long liners have suggested, to use only circle hooks on their lines, and also to eliminate all live baiting for highly migratory species. They believe that if you go to dead baits, that your likelihood of having bycatch will reduce, because live bait will kill everything that is out there. It is like a caged animal. You put a live bait on the end of the hook, and if he is hung up on the line, something is going to eat him because he is easy prey.

So you need to consider those kinds of things in there. In regards to some of the legislation that is out there, the charter industry in the Gulf, and this is Gulf-wide, has serious problems with the proposed bills for several reasons. Number one is in the buy-out itself, when you restrict the boats that are to be bought out to not get into any commercial fisheries anywhere, it does not say anything about not allowing them in the charter fishing business.

In the Gulf of Mexico, currently we are playing with limited entry. I am chairman of an ad hoc advisory panel that this issue is going to be taken up at the end of this month. We are trying to propose a plan for limited entry in the charter fishing business that currently does not exist. So we are very concerned about some people being bankrolled to join into our business. We do not want to see that happen. We are extremely concerned that by buying out boats, where it has been suggested that you are going to retire effort, in all reality you are not. You have got the same quota. You just reduce the effort by a certain number of boats. So you concentrate the effort for the same quota. So the buy-out without a quota reduction is not a good idea in my opinion. That needs to be rethought. We do not support that at all. And there are some other things in there. But in the essence of time, I will save those comments.

MR. MATLOCK: Thank you, Bob. Hammer.

MR. BEIDEMAN: Thank you, Gary. It is very difficult for me at this point to keep separate all of the processes that we have going on now. I hope I do not confuse people too much. For one thing, I would like to support some of the remarks that Bob made as far as the 500 fathoms in the Gulf of Mexico. And I would say that we need to take a very good look at the scientific data, both the reported data that we primarily worked on in the legislation and observer data that has not become available since we were through the scientific work on the legislative proposal.

And basically, what the data indicate and what the fishermen experience is that the primary problem of discards and bycatch, especially under-sized swordfish

and billfish, and also large coastal sharks, occurs inside of 500 fathoms in specific Gulf of Mexico areas, and inside of 250 fathoms in specific Atlantic areas.

Now the areas that are in the legislative proposal go offshore of those areas. Those offshore aspects are because of the knowledge of the fisheries, the cooperating groups' knowledge of the fisheries, and what was necessary to work out of very serious negotiations. But those coordinates cover the problem.

In the proposed rule, going so far offshore in those areas may cut some bycatch, but it creates other problems. It makes displacement a tremendous concern and a tremendous problem. And most of that, we feel, is very unnecessary, and we should compare the data including the observer data that is now available to see if meeting the practicality. Within practicality, I think we are all going far, far beyond the mandate of the law. And we are only concentrating on one fishery, because basically only one fishery has enough information on the table to take this type of serious look at it.

I would like to talk a little bit about the legislative proposals, and I appreciate the remarks that Jack had brought up. One of the flaws that I have had in dealing in fisheries management and I think my fishery has is when we recognize a problem that we want to roll up our sleeves, and we want to get the job done. And that is what we have done on this.

What drove us to this. I will start years and years ago. When we first started to organize in 1989 and 1990, we looked at what can we do to get rid of our Achilles heel of bycatch reduction. And ever since we reorganized way back then, we have told everybody involved that once we have a defined universe, and once we are under a limited access program, we will work to make a progressive plan to reduce unwanted catches.

Now we compete with fleets throughout the world that do not even recognize the word bycatch, and do not even recognize the word regulatory discard. We feel that we have been very responsible to step up to the plate and say we are going to do the best we can, even exceeding within practicality, to address these concerns, which are basically political concerns in this country, but have some biological validity.

But one of the things that I would really like to see, Gary, is I look at our analysis which has been done by professional scientists, Professor Goodyear or Dr. Goodyear, and these numbers are phenomenal. I mean they are just unbelievable. I have never, ever heard nor have I talked to anyone in fisheries management that has ever heard of any single action that could do what we have laid on the table here.

And I would just like to repeat a couple of the figures. And I would like the National Marine Fisheries Service to validate whether what I have for figures are accurate or not. I would really like to see that. And I am talking about 51.6 percent of the dead swordfish discards are attributed in the proposed closed areas, 51 percent of all dead swordfish discards within the USEs are in these areas. And 34 percent of the blue marlin, 15 percent of the white marlin, 48 percent of the sailfish, and 26 percent of the spear fish.

And then if all 68 boats accept the buy-out, we are looking at much higher numbers overall, 61.24 percent reduction of billfish and swordfish discards, 65 percent on billfish, 55 percent on blue marlin, 46 percent on white marlin, 47 percent on sail, and 37 percent on spear fish.

This is like unbelievable. This is like a miracle has come over highly migratory species management. And I am having a very large problem to understand why people are not coming together, and saying dammit they are doing just what they said they would do. They are stepping up to the plate, and they are addressing bycatch.

I do not understand why it is so important that no matter what some sectors try to do to improve their fisheries, that those that depend upon crises and the little issues continue to dominate the scene. It is unbelievable to me. But I would really like to see that analysis or review of what we have of Gene Kramer's pelagic long line database. I would like that verified and what have you by the National Marine Fisheries Service.

Another thing is there are different groups, and it was mentioned in the hearings last night. And there were questions put to me today, et cetera. Folks are getting over-capacity and addressing bycatch mixed up here. The U.S. pelagic long line fishery is not over-capitalized. In fact, we have only exceeded our quota in one year since the ICCAT quotas. And one year, NMFS shut us down like 1.2 million pounds shy of our quota. But we are not over-capitalized, and that is not what we are trying to address.

We surveyed our membership and the industry, and asked our members to go out in the industry. And what came back was that they would support closed areas and a buy-back narrowly focused on bycatch reduction. They recognized the problem, and they said let's roll up our sleeves, and let's do something about it. And what they put together is phenomenal, phenomenal. But it is specific to bycatch reduction. It is not for a group here that says well, my boats are not on the list.

Well, the reason that their boats are not on the list is because they do not meet the criteria set in the legislation that is focused very narrowly on pelagic long line bycatch reduction. That means that they are one of the remaining fisheries that should benefit and should share in the financial responsibilities of the program. Because yes, this program will strengthen the situation of the United States commercial pelagic long line fishery. It will strengthen it by resolving, substantially resolving our bycatch issues.

And what is one of the major incentives behind this from the fisheries perspective is that we are trying to compete with foreign fishermen who do not understand what we are doing, and their governments do not necessarily agree with what we are doing. And for ten years, we have tried to get these people to regulatory discard edible fish. We have become convinced that they are not going to do it.

So we have got to find a more practical approach to get the necessary conservation for many, many species, not just swordfish. What we think would be a more practical model would be specifically identifying hot spots, true hot spots of bycatch, what we consider bycatch. But maybe it is true hot spots of bycatch regulated species.

And that closing those areas reasonably, reasonably and within practicality, closing those areas, may be a more practical approach within the international forum than the United States for the eleventh, or twelfth, or I do not know, for the twentieth year, because I have only been involved in recent years, going there and trying to shove our morality down other countries' throats. It is not accepted, and it is not going anywhere. If we are going to progress ahead, we have got to have a more practical approach.

We have been brave enough and we have been responsible enough to step up to the plate, and we have considered that we have laid a golden egg on your table. I pray to God that everyone takes it serious, and that we can pull this all together. And that as quickly as possible, that we have a good domestic program, and that we have a program that we are all proud to stand together as Americans and take into the forum. Because otherwise, what are we doing, what are we doing.

You all know what percentage we are. You all know that these cutbacks in the pelagic long line fishery are not going to help conservation overall. So what are we doing. If it is going circles around the domestic fishery stabbing each other in the backs, we can go back to that. We tried to get out of that. This

proposal tries to get out of that. We want to roll up our sleeves and progress, not just here but in the real picture at ICCAT.

Let's hope that everybody looks over everything. It is not perfect. The bills in Congress do not address all of the problems in the pelagic long line fishery. They are not met to. They do not address all of the problems in the Atlantic HMS fisheries. They are not meant to. They were never intended to. What is intended is that they normally focus on recognized bycatch problems in the pelagic long line fishery. As far as I am concerned, they do that and they do that phenomenally. Thank you.

MR. MATLOCK: I have got Irby, Mau, Steve, John Jolly, and Dave Spaeth.

MR. BASCO: Thank you, Mr. Chairman. Just a few comments. I had a little time to think while Nelson was going through the dissertation. But in my opinion, we should not delay the time/area closures that NMFS is trying to implement, because we do not know what the legislation plan will look like, and when it will come out, or will it ever come out. I understand that there are other plans up there as well.

I have two other things here. It is a question for NMFS, what were your feelings about the Gulf Council voting to close the entire Gulf down. And the other question that I have is for Nelson, just as a point of information. I was wondering what percentage of the long line boats actually in the Gulf do blue water fishermen represent. I never did have those numbers. And those are the two questions that I had.

MR. MATLOCK: If I may get Nelson to answer that, and then we will move down the list. But very quickly, Nelson, and then I will take a stab at the NMFS answer.

MR. BEIDEMAN: Very little. We represent some of the key dealer operations. But quite frankly, since about 1995, the boats have been basically dropping out, because they consider us too much on the conservation side. The key operations represent a majority of the boats that are fishing in the Gulf of Mexico that are members. But membership from boats themselves is probably maybe 12 to 15 percent or something. That is just a wild guess, but it is not very high. We do rely heavily on those members that are members for their input.

MR. BASCO: Thank you for answering that question. So actually, I wonder if there might be somebody else here that could tell us what the actual Gulf boats might feel about this.

MR. MATLOCK: Let's try either Bob or Steve, which one wants to do it. Steve. State your name, please.

MR. LOGA: Steve Loga, Tuna Fresh out of Louisiana. I represent about 60 to 80 long liners in the western Gulf of Mexico. That is both boats selling to me and selling to my competitors. And they adamantly are opposed to NMFS' proposal. I think that is safe to say. And getting on to the Gulf Council vote, you know, as an industry representative, I really feel that it was just something that was to start more trouble than anything and stir the Gulf to standing up and saying why are they closing the western side when it is the cleanest fishery in the Gulf, and why not do something on the eastern side, and they decided to go ahead and do the whole thing.

And also, I would just like to say that six or eight members of the Gulf Council called me up and said that members of the Gulf Council were saying that Tuna Fresh was in support of closing the entire Gulf of Mexico, which is absolutely false. It was something that never should have been said, and something that was said by someone at this table.

And I think that may have had some bearing on the Gulf Council's vote. That if one of the largest pelagic dealers in the Gulf of Mexico is in favor of closing the Gulf of Mexico, that may have made their decision to go ahead and

vote to close the Gulf altogether.

I think that the Gulf Council's vote did more to hurt anything than help anything. The Gulf Council never looked at any information that was presented to them, and did not go ahead and do what they should have done, which was to say that the western Gulf of Mexico is the cleanest area of fishing in the United States. Why go ahead and close that.

MR. MATLOCK: Bob, if you have got a specific answer, okay. Otherwise, I will put you on the list after the ones that are already on there.

MR. ZALES: Later.

MR. MATLOCK: All right. I will put you down for later. The answer, Irby, to your question relative to NMFS, is we found the vote interesting. Next, if you are finished, Irby, next is Mau. We will go there.

MR. CLAVERIE: Thank you. I guess I better start with the Gulf Council vote. That is where it ended. We got boxed in, and it ended up that way. Obviously, the NMFS closure in the northeast corner of the Gulf, apparently according to your own data, it is a 70 percent reduction in yellowfin tuna. And actually, little or no decrease in any kind of bycatch. So it go moved further east in discussion, and there was a hooker in that one. And that is that the motion that did that said that the Gulf Council approved the legislation, which was in effect the legislature taking over the council's job. So that garnered a few objections. And then it finally ended up the whole Gulf, which was a surprise. So it was either that or say nothing about NMFS' closure in the corner.

The plan itself, which was developed by the five councils and amended by big NMFS last year, lists as the number one problem the intense competition for the resource between the commercial and recreational fisheries for the billfish situation. The plan also acknowledges, as it has from the beginning, that the problem with the bycatch of billfish in the long line fisheries that have billfish bycatch -- and by bycatch, I mean actually bi-kill, because the U.S. has a strained definition of bycatch. But the mortality brought about by the long liners has always been a problem, and is a major problem in the fishery. And we know from ICCAT that that is true Atlantic-wide.

And the Gulf Council requested that NMFS in arriving at its conclusion on how to do this closure in the Gulf that they were talking about consider the intense competition problem in the Gulf. The Gulf apparently is the only area in the United States that has a longstanding scientific database on the interaction, I am not talking about the physical interaction, but the interaction as between recreational fishing success for billfish and the presence or absence of long lining in the Gulf.

We requested that that be considered. We also requested that research be done on that as part of any closure. And we learned that none of that was considered or is on the table, in arriving at NMFS' conclusion to close the little northwest corner, a big northwest corner of the Gulf, but the northwest corner of the Gulf.

And that is something that we continue to request, that NMFS take those things into consideration. Again, I say that the old data from 1971 forward on fishing success rates in the recreational fishery for billfish as compared to whether or not -- in those days, it was only the Japanese long liners operating for yellowfin tuna in the Gulf -- whether there was a presence of absence of the summer long line fishery, it shows that the Japanese were either in the Gulf or they were not in the Gulf. That is all we know. And when they were not in the Gulf and there was no long lining going on in the Gulf during the summer months, the recreational fishing success was substantially higher than when they were operating.

Now you have that database. It is on the number computers. Part of it comes

from the U.S. fisheries, and part of it comes from the Japanese fishery through ICCAT. And directly when they were fishing under GFRS in the Gulf, they gave us the information directly, which is the same thing that they gave ICCAT, but we would get it sooner in that method.

And that is a disappointment that that is not being considered.

The long line fleet has known since the plan and even before, but officially the plan, that the bycatch or bi-kill of billfish is a problem in the billfish fishery. And over all of these things, they have not really directly addressed that problem.

I just heard Nelson say that they were going to first find out who all they were, and get a limited entry system before they got into that phase of it. So I guess that I just heard that they admit that they have been delaying that.

The legislation that is proposed, what we call in Louisiana the Breaux bill, does call for research on the interaction between recreational and commercial fishing vis-a-vis billfish in the mid-Atlantic bite. I do not think that that geographic description includes the Gulf. If it does not include the Gulf, which it may or may not, it is not defined, but I think that the mid-Atlantic bite is what looks like a bite out of the sandwich in the United States, which is from about Florida up north where the coastline goes in a little, if that is what it is, then that is a problem with the legislation.

We have the old database and can carry it forward to see what the impact of the closure and the scientific fishing is going to have on the recreational fishery. And the legislation does not call for that to be done, or does the NMFS proposal. So that is a serious deficiency.

There was mention of the 500 fathom line in the Gulf. From Grande Isle east to some point that I do not know, that would be very objectionable. Because the 500 fathom line is so close to the shoreline there. And what is happening and is the great fear is that either under the NMFS proposal or under the legislative proposal, that long liners who are now fishing in the area that would be closed, areas, which include not only the Gulf but the Atlantic side, would be forced, some of them, how many of them we do not know, but even in the NMFS draft document, there would be a concentration of long lining effort in the area to the east, between the center and the east part of the Gulf, which would be in competition with the recreational fishery.

Also, the charts and descriptions in the draft document that NMFS did indicate that leaving that open and closing the part that NMFS is proposing to close would actually increase bad bycatch in some areas and in some species. We know from the old Japanese data that was provided to us on a computer printout, that is how old it was -- in the old days when you used the accordion type paper with the green and white lines -- that it in the Mazan's quarter square 814, which is basically east of the proposed NMFS closure in the Gulf, during the summer months, the Japanese long line fleet supposedly fishing for yellowfin tuna by head count of fish that they reported during some months during the summer, that the ratio of billfish caught to yellowfin tuna caught was over 90 percent billfish. That is not by weight, but that is by head count. That is what the printout was.

So it is obvious that that area that these long liners are going to be moved into has historically had a very high bycatch rate of billfish when they are fishing for yellowfin tuna. And for NMFS to move boats into that area is not really a good thing to do.

Now the Gulf as we know it is governed by currents that are governed by God knows what. Our weatherman thinks that it is governed by the location of the Bermuda High that blows the water through the Caribbean into the Gulf. We do know now from satellite imagery that there is a loop current as we have always called it. And their spires or gires, or whatever is going on from that loop

current, and the fish are in those.

The bottom line is where the billfish are and where the bluefin tuna are, and I suspect where the yellowfin tuna are, can change with weather conditions or ocean conditions. And so if you legislatively or regulatory-wise close an area and the current decides to do something different, the result will be different.

So faced with all of these problems, we say if you are going to do anything, go with the old data, and consider closing the whole Gulf. Because we know that when that happens, that it reduces the competition, problem number one, in the plan.

There are three and maybe a fourth -- well, there are three signatures on one minority report to that action, and you all have that. And basically, it says why the hell are you closing down an industry. And I forget what else the points are, but they are pretty good points by those people. And there may be a fourth one coming that I have not seen yet. We have not gotten it in the council thing.

So it is not a slam/dunk deal, but it does have a lot of basis. And I think it points to the fact that NMFS needs to rethink their closure. And hopefully, the legislation can address that issue too. I guess you are saying that I said that you supported the entire closure. I do not remember doing that.

MR. LOGA: We can talk about it now or later. It is up to you.

MR. CLAVERIE: What?

MR. LOGA: We can talk about it now or later. It is up to you.

MR. MATLOCK: I would prefer that you talk about it later, guys. There are an awful lot of other people who would like to offer comments. And the debate about who said what to whom and when probably is better served outside.

MR. CLAVERIE: If I said that, my mouth was not following my brain, because I know that you do not.

MR. MATLOCK: Anything else, Mau?

MR. CLAVERIE: Well, when we get to talking about bycatch in the long line fishery, that is an international issue. And that is really considered internationally as what we would call bi-kill. Because our definition of bycatch is goofy. In fact, one of our council members said what is NMFS doing. Because in researching how to save the lives of fish that are released, because no matter whether they are alive or dead they are called bycatch by us.

But actually, as I understand quotas and whatnot, they are only considered dead releases, if you are going to have discards. And the scientists when they are doing their annual or biannual thing is only what is killed. And so we definitely ought to do something about that in the fishing community that reduces confusion as to what you are really doing. And the competition for the resource issue needs to be considered by NMFS, and it has not been. Thank you.

MR. MATLOCK: Steve Berkley.

MR. BERKLEY: Thanks, Gary. I am going to apologize in advance. I am new on the panel, and maybe I am going to be going over ground that has already been gone over in the past. But in going over these area closure documents, I must say that I have had trouble teasing out the separate effects of the two different closures. They are usually presented as an aggregate effect. And I am curious because mostly my own research in recent years has been in the Gulf of Mexico. So I was curious as to what the effect of the Area B proposed closure would

be.

And I think that it is probably contained maybe in some of the appendices, but it does not jump out at you. And so I had difficulty disaggregating the impacts of those closures. But the closest that I could come is in this draft supplemental EIS. I guess that it is attached in this technical memo document on page 25. And it discusses closures in the Gulf of Mexico, the three proposed areas, from June to August, which I know are not the actual proposed closures.

But that was about as close as I could come in a concise table, which has tended to confirm what my research suggested. That the impacts are relatively minor, and in fact in some cases not the desired impacts. The swordfish discards in fact go up with that closure. And the large coastal shark discards go up with that closure.

And the only significant impacts, positive impacts, on bycatch are a roughly 6 or 6.5 percent decrease in blue and white marlin, but with an 8 percent increase in sailfish discards.

So I am curious. I know again that there is a month. This is sort of truncated, and it does not include the May and the September closures as the proposed rule has. But I am curious as to how that Area B got in there, or do those two months make such a big difference that there is a much more significant reduction in bycatch with that Area B closure if you include those months.

Because from what I am looking it, it seems like it is almost not worth the effort. This is with displacement, I am sorry. Which I think in that area would be a reasonable scenario, because logically a boat is not just going to just disappear from that fishery if he only has to move a few miles to fish.

MR. MATLOCK: Let me take a short stab at it, Steve. And then if you want to have further discussions, it is probably worthwhile doing so with Buck Sutter or some of the other staff. But as I recall, adding the months from March through September had its biggest impact on reducing the swordfish discards. It did not affect substantially the changes on billfish, but did also affect bluefin tuna discards.

So in trying to pick a closure that has the overall impacts on all of these species combined, those improvements in the discards in swordfish and bluefin were such that they warranted adding those additional months in the proposed rule versus what was in the draft technical memo.

MR. BERKLEY: I guess my question really was why that particular area than why those particular months in that area.

MR. MATLOCK: That one I cannot answer. I simply do not remember, but Buck probably can for you. Let's see. We have got John Jolly next.

MR. JOLLY: Let me get back to my notes here a little bit. For the record, I think that the West Palm Beach Fishing Club would like to congratulate NMFS on moving to a concept of erring on the side of conservation. In the white paper in 1987 on king mackerel, we expounded somewhat on this philosophy. And we hope that you would go in that direction. And the club sees this kind of thing as tangible evidence of the fact that you are moving in that direction. So anyway, my congratulations. The club would like to extend that to you.

Secondly, we continue to think that the concept of local availability in fisheries management is a valid one. And we would hope that you would consider that as well, and I know you are doing that.

We are also concerned in the northern Gulf --

(End side B, tape 2.)

A PARTICIPANT: The traditional people in that fishery will be as disadvantaged over these closures. So for that reason, I would like to see the Breaux plan, if that can happen, to give it time and maybe expand it, and work out some of these problems that these other fisheries have in these other areas with these displaced folks. I have no idea how many that may be, and I am not sure that anybody else does. And that is a grave concern to our fishery.

MR. MATLOCK: Thank you, Bob. David Wilmot.

MR. WILMOT: Thank you, Gary. I will attempt to focus my comments on the proposed rule. I recognize that those are the comments that you are most interested in. However, it is difficult not to talk about the other proposals. For one reason, not everyone around the table is familiar with them in as much detail as Nelson and some of the others. So it is tempting to want to raise some of the concerns that we have, and at the same time raise some of the aspects with the proposals that we are comfortable with, and would like to see move forward, et cetera.

So I would just say that I prepared testimony, and I was at the hearing the other day. If there is someone who is interested in our position, I welcome them to ask me for a copy of this, so i can try to stay focused on the proposed rule.

Let me begin, Gary, by congratulating you. As one of the plaintiffs in the lawsuit that is getting credit for forcing you to do this action, which I am not so sure is actually true, all along our goal has been to simply see NMFS put together a rule that would address bycatch in a way that lived up to the Magnuson-Stevens requirements. And we believe that this is a good first step. We are going to be providing detailed comments on all aspects of the rule. But I just wanted to run through a few of the things.

On the conservation front, the closed areas in general are quite good. We strongly support the large scale closures. I share some concerns that were raised last night, and Steve Berkley raised them this morning with the specifics of the areas. If I can digress for just a moment.

In the Gulf, the area that comes up is the northeastern Gulf. And on Figure 2 in the technical memorandum, it shows pretty clearly that that indeed is a swordfish hot spot. I will not ask you questions at this point as to why that was not included, et cetera. But it seems pretty clear to us that that area is going to have to be included. Because redistribution the Gulf with the legislative proposals or the proposed rule is simply going to happen. I do not think that there would be any disagreement here that that fleet is going to move out of whatever areas are being proposed. And the bycatch of swordfish is likely to increase.

And when one looks at Figure 3 and Figure 4 with blue marlin and white marlin, there is not going to be a problem. At least based on the data that I have seen, I really just do not see an intensification of the marlin bycatch.

The south Atlantic closure is good. It hits the right spots, and we know that is an important nursery area. And it is going to help small swordfish, and it is going to help sailfish, and it is going to help some other critters. But the redistribution, it is going to be very difficult for us to separate it from it. So while that area is the same, when one looks at the assumption of redistribution of all effort, and then recognizes that reality will be somewhere between, no effort redistributing into the mid-Atlantic into the New England region.

And all of the effort, and I am not thinking just in terms of boats here, but just in terms of sets and hooks, we could see a very bad problem. In New England, the sea turtle situation jumps out, of course, as well as pelagic

sharks. The sea turtle situation, I understand, is under consultation. And so we may not have the answer to how bad that situation is. But this would only in our opinion exacerbate a potentially disastrous problem. If people do not like dealing with the Magnuson Act, wait until they have to start dealing with the Endangered Species Act.

The pelagic sharks. At this point, they are not listed as over-fished. Not all of us sitting around this table are confident that they are going to stay in that over-fished category. So there may be additional actions that are needed by the service to address what is happening with pelagic sharks. That would certainly be problematic in the New England region with increased effort. In the mid-Atlantic region, we are talking white marlin, and we are talking sharks. And the same types of concerns come up.

So I think that we probably will offer some suggestions, some additional areas in the mid-Atlantic. Some additional ideas may need to be brought into play to help prevent the worse case scenario from happening. But in general, we are quite confident that these large scale closures were in general the right areas. They are going to have benefits, even with reallocation of effort up to a certain point. And we will probably provide more specifics.

I will kind of slip over a little bit into the legislation here. Because so much has been talked about with the redistribution of effort. And it is uncertain what is going to happen under all of these proposals, even with a buy-out. The buy-out, I think as Nelson clearly pointed out, it is not a reduction mechanism. It is not an over-capitalized fleet. This is not to reduce effort. It is to remove X number of boats that would be negatively impacted. And we do not oppose that or have a problem with that.

The key here is that there are a number of ways for these effort to redistribute, and I think that it is really important that we all remember this. Boats could refuse a buy-out, or just leave a closed area and go fishing in an open area. Boats in an open area already could increase their effort. They could set more hooks. They could put out more line, and they could put out more sets. They could keep it in the water longer. They could do a number of things to increase boat effort.

Also, looking at the figures that were put up yesterday, about 250 permits to target swordfish, I would guess, Nelson, about 215 or 220 of those, maybe 225 maybe are long liners, not all of those guys -- the reason I asked my question yesterday. I suspect that a much smaller number are catching a large percentage of the quota. If that quota is still in the water, there is every reason to believe that long liners in the Pacific are going to come back. They have a permit. They have not used the permit in a long time, but they can reactivate it. The gill netters may switch over, and start fishing.

So these are, we think, very legitimate concerns in both cases. We do not know what the answer is going to be. The reason I raise it here is we think that there are things that can be done in the legislation to help solve it. We will have some ideas for the proposed rule.

But what I really want to emphasize is the research and monitoring. If we do not put in much better program in place than we have right now, there is no reason that any of us sitting around the table should have the confidence that in two years, three years, four years, whatever number we want to pick, that we are going to be able to evaluate the effectiveness of these closed areas.

And that is what this is all about. As Jack rightly pointed out, we have made great strides in swordfish in terms of rebuilding swordfish. This is really not any longer just a fight about trying to get swordfish back. We believe that bycatch reduction is an important measure for conserving these fishes and rebuilding them. There is no doubt about it. There are some species like marlin is essential.

But for something like swordfish, the rebuilding is going to make the situation better. More fish are going to be in the water, and bigger fish are going to be in the water. Getting you guys out of the areas of the small swordfish is going to help, because it is not going to count against your quota. But we have to be confident that what we are evaluating is reality.

So I will once again be pleading to the service to try to find the dollars to make sure that we can enhance observer coverage, that we can put a research program in place that is looking at not just alternative gear types, circle hooks, et cetera, but just what is actually happening by putting these closed areas in place, within the closed areas and outside. And if we do not have this information, we are going to unfortunately be having these same debates for years to come.

So just in closing, congratulations. It is a good first step. We will provide detailed comments. And we do want to work to move some of the other proposals forward with the ideas that we have outlined. And I can assure you that for folks around this table who are committed to that process, that we believe that there is an opportunity, and we would love to be able to act on it.

MR. MATLOCK: Thanks, Dave. Frank.

A PARTICIPANT: Thank you. I think that it is very important that we have to have a way to evaluate the success of the buy back program. Because a lot of the reductions are relying on some of the buy back. We have to look at what happened in New England. I know that it is a little bit different situation, but we bought back 79 vessels. The following year, 92 vessels started using days at sea. So the latent effort did come back into the fishery.

The landings continue to increase, and we are closing more areas. So that is something that we have to look at. We have to be able to track the success. I think that the vessels must be scrapped. I do not think that they should be allowed to enter into any other fishery once the buy out happens. And also upgrade restrictions. If we have no upgrade restrictions, the latent permits can come back that were on smaller vessels and whatnot. And they could come back on much larger vessels with much more effectiveness. Thank you.

MR. MATLOCK: We have got several more to go. Let me tell you who is up, so you will know that your turn is. Gail Johnson, Bob Zales, Jim Donofrio, Linda Lucas, Russ Dunn, Russ Nelson, and Sonja. So Gail Johnson.

MS. JOHNSON: Thanks, Gary. Just to put your mind at ease, there are update restrictions already in place. Specific to your proposed rules, the northeast part of the Gulf of Mexico that people keep referring to, I believe is the Desoto Canyon, and that is an area that needs to be addressed.

Your proposed rule has no mitigation for economic impacts. That is a very big deal. And along with that, it makes the displacement that everybody fears go much more likely. Having said that, a great percentage of those eligible boats for buy back are too small to fish out of the area without totally relocating.

Bycatch reduction is the focus of this proposed rule, and the focus of all of our discussions, or at least I believe that was our intent. And to the point that someone made about reducing the quotas to go along with reducing effort, either as a result of legislation or as a result of attrition from a proposed rule implementation, adjusting quotas to match perceived effort reductions is a very bad idea, and could and probably would have consequences for all of the HMS ICCAT species.

About effort relocating or redistributing. From a practical point of view, the things that people said for redistribution were to make longer sets, to set more line, to fish harder. We approach diminishing returns. Perhaps if there are trade measures in place that restrict imports to only the various countries' quotas, that might help our market. But anybody who is able, and I

really question the ability to fish harder, if they can do that, then the market most assuredly will not in the long term reward them. So those are the comments as far as I can make them on your proposed rule.

MS. LENT: Thank you, Gail. Bob Zales.

MR. ZALES: First off, I keep hearing that we do not know what is going to happen with this buy out, how it is going to affect it, and what it is going to do to the closures. And all I can do is reference a little bit of history. And even though it is not highly migratory species, it is a fish that in the Gulf of Mexico is in a similar situation in my opinion, and that would be the red snapper.

There was no buy out on the red snapper commercial fishery. But there was a limited entry program put into place, and a 2000 pound stamp created. What that did was go from permits with the ability to catch red snappers from about 2000 to 120. The 4.5 million pound quota has caught up today quicker than it ever has been until they changed playing with days open and days closed. So that is where I talk about that when you take about 68 boats, all you are going to do is concentrate effort.

The other thing that I have got to say in here, and especially to the aides and representatives who are playing with the bills, for people who have not lived under congressional mandate, take my word for it from the Gulf of Mexico, you do not want to go there. I have lived under congressional mandate for recreational red snapper for four years. You cannot change it without going back to Congress. So when you deal with something in Congress, you have to be absolutely 100 percent certain that is what you want. Because the odds of you changing it any time quick after that ain't going to happen.

So right, wrong, or indifferent, the process that we deal with with the fishery service is a process that can change much quicker than dealing with Congress. So you need to think long and hard before you go there and get on that page. Because we went there unwilling. We were put there with red snapper, and we do not like it, and we are still trying to get out of that box.

The other thing is that the four groups that are playing with this congressional legislation, proposed legislation, are not representative of the recreational and charter boat fishermen in the Gulf of Mexico. They do not include the voice for all of the people there. The people in the Gulf of Mexico are opposed to this, and they do not want to see what is going on with this, and they are not involved in the process. And I think that these aides need to take that back to their people.

Because I am fairly certain that Senator Breaux and Congressman Tauzin not only from their own constituents are going to have a backlash, but are going to have a backlash from their neighboring states. The last thing that I am concerned with this whole process or the next to the last thing, one other thing is in red snapper, when you talk about the number of fishermen who are out there fishing permits, they catch the majority of the fish. And red snapper, out of the 120 people that have 2000 pound snaps, about 30 of those snaps catch 80 percent of the fish. So you can relate that to where you are going with swordfish at some point down the line.

And the last thing is some friends that I have who are in the long line fishery in the Gulf of Mexico would take big exception to the statement that was made earlier that the reason why they are not part of blue water is because they were not willing to be conservative. Thank you.

MR. MATLOCK: Okay. I have got four more people. What I would propose to do, since we are now at about 11:45, is that after these four folks have addressed us is to give you as best I can the points that I think I have heard sort of addressed one way or another, and see whether or not you have some agreement that you can give us on these points. There are about five that I have so far

down. So if you do not have an objection to that approach, when we get done with these four folks, that is what I would attempt to do. If you do have an objection, we can do something different. But let me give these four people who are on the list an opportunity to talk. Jim Donofrio first, Linda Lucas, Russ Dunn, Russ Nelson, and Sonja. There are five, excuse me. Jim.

MR. DONOFRIO: Gary, thank you. Jim Donofrio representing the RFA. I want to go on record saying that I support what Dave Wilmot was talking about, about evaluating the time and area closures.

My question to you, Gary, is what type of budget does NMFS have through either NMPA, ESA, or your own budget to enhance the observer program. Obviously, the legislative and the regulatory approach have a line drawn around the North Carolina area for a reason I am assuming is because there is a lack of data to the north.

Knowing anecdotally my experience fishing in that area for over 25 years, during the summer months when we have a lot of yellowfin tuna in that area, there is a high incidence of interaction with white marlin. My concern is are we going to put the observer coverage on and look at this.

MR. MATLOCK: It is always difficult as a person in an agency to talk about the budget, especially at a time when a budget has just been introduced, and we are in the process of dealing with one currently. But I will attempt as best I can to give you as short an answer that I can that means something, rather than a bunch of rhetoric.

The amount of money that we have within the Fishery Service is something on the order of \$380 million, I believe, currently. That money is structured in such a way that what we do with it and can do with it is limited to some extent. We have within that total budget a lot of responsibilities. And we attempt to use the discretion that we have to get as much of the highest priority items that we are supposed to do done as we possibly can.

So we spend enough money currently as a top priority to satisfy the ESA biological opinion requirements that we have within the HMS fisheries first and foremost. If there is sufficient money beyond that within our discretion to increase the coverage for other purposes, then we attempt to do that as well. But the money that we get and the way that we can spend it is determined by Congress. And the amount of discretion that we get is determined within that budget that we get from Congress, and signed off on by the president.

There is no way that I can guarantee you in February of 2000 what will happen in 2001, for example, starting in October, because our budget is not yet approved. We do not have a budget from Congress. With the current budget though, I can tell you that our approach to getting observer coverage is to get as much as we can on long line vessels with the money we have, and to meet the biological opinion requirements first. And that requires that we get about five percent of the trips that are made each year covered with independent observers.

We generally get close to that, but in most years we do not quite make it. And I do not expect that will be any different in 2000 than it has been in the past. Linda Lucas.

MS. LUCAS: I have two comments, and then I guess some questions. I think this proposal will definitely reduce bycatch. And now we are appropriately trying to assess the cost of that action, and that is where my questions come in.

First of all, I wanted to mention that historically we have a lot of evidence that displaced vessels go other places besides than just sort of across the bay. As David mentioned, we have evidence of vessels moving to the Pacific and moving to other countries in many cases. And that makes this even more complex, and we try to predict where they are going. My suspicion is that they will

make an economic decision based on their best opportunity.

Secondly, for the record, I would just like to say that I do not see this as a time/area closure decision. In fact, I see this as some kind of a hybrid gear restriction in the classical sense. We are closing the time and areas, but not really to everyone. And it is kind of simply along one gear and one species. And we talked about this early in the history of this panel. I just wanted to bring it back.

My third area, and the one that I am the most concerned about, is assessing the cost of this action. And I went to look at the economics. And if anyone wants to follow what I am going to say, I am looking at this yellow book that we received, and I am at about pages 121 and 123 in there. And I want to make sure that what I am reading is correct.

Let's see. The data were collected from 331 economically active vessels in 1997, and 131 dealers associated with those vessels. Based on that analysis, if we implement the preferred proposal, 25 vessels will receive no more revenue. This is under the no displacement scenario. And 28 dealers will receive no revenues. So they are just out of business as far as we know, if we buy back. They are just out of business. So that is 25 vessels and 28 dealers.

We have also got 71 I think, if I am reading the table correctly, 71 additional vessels that will lose 50 percent or more of their revenues. Is that right so far? And 46 additional dealers who will lose greater than 50 percent of their revenues. So we have 74 dealers who are either out of business or a 50 percent reduction in their revenues, and 96 vessels that are either 50 percent reduced in their revenues or out of business as a result of this action.

I cannot tell from this document what are the characteristics of those vessels and those dealers. I cannot tell whether the revenue data are for all swordfish license holders or just for swordfish long lining vessels. And I cannot tell which regions will be differentially impacted. Because my sense of this is that we are dealing with two different fleets and two different regions that are impacted in two different ways. And I cannot tell from this, for example, if the Gulf area or the Atlantic area has more of these 96 vessels or more of these 46 dealers.

That is my comment. If you have answers to those questions, I would appreciate hearing them.

MS. LENT: Thank you very much, Linda. Of course, I always get nervous when you start flipping to the economics part as the professor. I do appreciate you paying a lot of attention to that section, because that is extremely important.

What we did for the socioeconomic and the community impacts was multi-fold. The most important aspect of the analysis that we did is we assumed the worst case scenario. We assumed zero displacement. We assumed that the dealers would not move, and that the boats would not move, and that they would lose all of that activity.

So yes, I believe that the way you are reading the table is right, and I do believe that those are cumulative totals are you go along. But we can chat about that. The idea is that we looked for that year at those boats and at those dealers, and said what percent of the sets or what percent of the actual catch by boats were made at those times in those areas. If they made all of their catches and all of their revenues in that area at that time, then it was zero displacement and they lost all of their income. If the dealers bought all of their fish from that time in that area, then they had that lost income.

So just a little bit of background on that. And again, urge people to read that. And any suggestions that you have in improving clarity and improving presentation, that would be great. I would also call your attention to Appendix

A which looks at some of the social impacts. We do try to break that down by area to the extent that we can. Some of those are truncated analyses. It is not always easy to go back in. And out of those boats that had a 20 percent reduction, ya-ya-ya. But if you have some specific suggestions as to how to improve those analyses for the final EIS, that would be helpful.

MR. MATLOCK: Nelson, I see. But there are other people who have not had a chance to talk, and we are running out of time. So let me get them, and then I will come back to you. Russ Dunn.

MR. DUNN: I will be very brief, since we are running short on time. Again, I want to throw my voice into the ring where people are congratulating all for taking an important step towards reducing bycatch. I also want to add my weight to the concerns which have been voiced of efforts shifting towards the eastern Gulf, and particularly focusing NMFS' attention on looking at potentially closing the area, which I think Gail referred to correctly as the Desoto Canyon.

I know that if you look at all of the charts that you gave us, it has high discards of swordfish, and it has a pretty substantial large coastal catch. And it is an area which I think NMFS needs to go back and look at in terms of potentially adding to the area closures.

With regard to the closed areas themselves, the campaign is of the position, which I believe that NMFS is, that a buy out is not necessary per se to move forward with this program. Not to say that we are not supportive of having some mitigation for the economic effects of those areas being implemented. But one of the issues that we have discovered through some analyses of the economics is that we believe that there are indications that the costs associated with the closures have been overestimate, and the benefits of the closures may have been under-estimated. And we will be providing additional comment, as Rebecca just requested in our final comments on the plan.

Another issue which gave me some concern that Penny mentioned during her testimony on Tuesday was she alluded to a potential phase in of the closed areas in the proposed rule. That is something that the campaign would object to, and does not feel that NMFS is obligated to do in any way. We feel that they should be implemented fully when the deadline is reached.

And one last thing just to touch on, adding weight again to the calls for increased monitoring. The first thing that comes to mind is that we are already below the ICCAT minimum recommendation for observer coverage for pelagic long line vessels. We need to at least get to that five percent coverage. And we believe that we need to go well beyond five percent to really get the statistically significant numbers. And we would like to see if possible NMFS dedicate more funding towards that to better evaluate the effectiveness of the closed areas. Thanks.

MR. MATLOCK: Thank you, Russ. Russ Nelson.

MR. NELSON: Thank you, Gary. Given your initial comments, I am going to refrain from discussing the legislation, and try to just talk about what is or is not good about your proposed rule from our perspective.

One is that it is clear that there are benefits available from time/area closures. And I think that the consensus that you have heard here from people is that in terms of reducing bycatch of a variety of critters including under-sized swordfish, that action has potential.

The problem with your rule or the main problems is that one, you do neglect the Desoto Canyon area in the Gulf, which has been identified over the last twelve or fifteen years as a hot spot for under-sized swordfish catch as well as billfish bycatch. And you do not control effort by closing the areas in your rule.

And I strongly disagree with comments that I have heard from others around this table saying that there is really no need to -- well, if the comment is that there is no need to buy people out or equivalent to saying that there is no need to remove that effort completely, then I strongly disagree with them.

By your own admission in the document, none of your proposals will achieve the goals of reducing bycatch in HMS species, turtles, birds, and marine mammals. Any of the alternatives will achieve some mixed success but no complete success. And clearly, the reason is because effort that will be eliminated from the closures during those times when they are closed will be displaced to other areas.

In fact, I think that your analysis of the problems with the displacement of that area does not go far enough, because you do restrict it to looking at what is likely to occur in the HMS fisheries, bycatch of billfish and swordfish.

Many of the vessels involved hold permits in the south Atlantic refish fishery, the snapper/grouper fishery in the south Atlantic, the Gulf refish fishery, the Gulf and South Atlantic coastal pelagic fisheries, fish for dolphin occasionally, and even some of these vessels have wreck fish permits.

This latent effort that exists has been ignored when you look at what will happen in terms of displacement. All of these fisheries are primarily overcapitalized with the exception of wreck fish. They are complex species, some of which are over-fished. So by closing these areas without doing anything to eliminate those vessels that have utilized these areas, you are going to be increasing fishing effort in a number of fisheries under the jurisdictions of the councils outside of the office of HMS. But there are other externalities that I think your document has ignored.

You probably have not paid enough attention to the potential for direct not physical but geographic conflicts that I think you will create by proposing to close the western Gulf of Mexico. Vessels will be moving into the eastern Gulf of Mexico during the very time periods when the charter and recreational fishery for billfish or offshore fisheries are the most intensive.

The very displacement in the same times and areas of the long line vessels into these areas is going to create conflict, be it actual conflict over fishing grounds or the perceived conflict that will accompany the perception that this extra competition has been injected. And I expect that this similarly will occur off the North Carolina coast.

Curiously, the alternatives that you have rejected, the use of circle hooks, the prohibitions on live baits, and various restrictions on the length of sets either in physical distance of the long line or in times, probably have more positive benefits than you have ascribed to them. And in fact, all of which could certainly be enacted in a complementary fashion to some positive time/area closure.

I look at your analysis on the cost of requiring circle hooks in the fishery. I find it kind of curious. You come out with a cost to the industry of about \$2.25 million. Circle hooks cost a quarter, and 79 cent J hooks is what you use in your analysis. I do not know who did this, but I do not know that they were particularly insightful as to the nature of the fishery.

If you were to look at what the life expectancy of the hook is in that fishery on the long line, I think that you would see that if you just offered this regulation that you were going to require a circle hook and said you will not implement it for six months, every J hook that was out there would be gone and would be replaced by a circle hook. And given your estimate of 9 million hooks in the fishery, if they could all be replaced by a hook which cost a little over fifty cents less than the current hook, you would be right there giving

them a nice boost of about \$5 million.

So I am curious as to some of the analyses that go into supporting the rejected alternatives. Were you to decide that you need to proceed with this rule, I would suggest that you look seriously at including some of the rejected alternatives in terms of the use of circle hooks limiting in time or in distance long line sets, and the elimination of live bait.

And were you to proceed with these time/area closures, in order to get them to work correctly, then I think that the National Marine Fisheries Service should revoke the permits for all fisheries under your jurisdiction of any vessel that is substantially fishing in these areas, and revoke their permits to their effort is not displaced anywhere else. Thank you.

MR. MATLOCK: Thank you, Ross. Sonya was next.

MS. FORDHAM: I want to briefly echo David Wilmot's comments. The Center for Marine Conservation is part of the Ocean Wildlife Campaign. So our views on the buy out are consistent with those in Dave's testimony. As far as your proposed rule, I want to generally applaud NMFS for moving forward, and offer our general and strong support for closing large areas to reduce bycatch, excessive bycatch of highly migratory fish species.

We are, however, pretty seriously concerned about the effect of the displaced effort that the impact might have on pelagic sharks as well as protected species. And I am sure that you are aware that sea turtle conservation and marine mammal conservation are key parts of CMC's work. Our sea turtle scientist, Pam Plotkin, was here earlier and yesterday. She is going to be providing some specific comment on her sea turtle concerns as part of the general ocean wildlife campaign comments. I know that she is aware of some sea turtle data that she thinks is missing from the document that might be helpful to you in this analysis.

In general, as was said before, I think monitoring and observer coverage to make sure that these plans are working is really crucial. I think that NMFS needs to maintain the flexibility and the ability to act quickly to address any unforeseen problems with protected species.

And I was scribbling that down, I realize that I say that a lot about a lot of things. But I would ask you to keep in mind that we are dealing with threatened and endangered species. So we want to act very carefully to make sure that we do not exacerbate their depletion, but also to avoid the serious consequences that could result if we violate the Endangered Species Act.

So in general, we support the closed areas. And we will be providing specific comments as part of the OWC comments. And we would also object to any phase in of this important program. Thanks.

MR. MATLOCK: Thank you, Sonja. Let me try to capture where we are as best I can. There are three folks who would like to talk that were on the previous list that I gave you. I would very much like to see if you can reach some kind of consensus. And I think that there are enough comments that are similar in some nature that we could probably get something out of you as a couple of groups.

I am going to have to leave unfortunately sooner than I thought. And so we can spend the time that we have remaining with the three people who want to talk and probably not get any consensus from you. We will just have the comments from individuals. And then go on to bluefin tuna, because I know that was a topic that others wanted to talk about at lunch. Or I can try to give you what I think I heard, and we can spend the next remaining time either saying yeah, that is right or no, you have got it wrong and there is no consensus.

So the three that I have on the list yet to talk are Nelson, Jack Devneu, and

Ron Whitaker. So I would like to know from you guys what do you want do, do you want to have a chance to talk more, or do you want to try to reach a consensus. Let me do Nelson first.

MR. BEIDEMAN: I will make it very brief and specific to Linda's point on economics.

MR. MATLOCK: If you do that, I will not have the time to deal with trying to get a consensus out of you. So do you want to do that, or do you want to do a consensus type discussion?

MR. BEIDEMAN: I do not know that there is any consensus in this room.

MR. MATLOCK: So you do not know. Let me check with Jack then before you answer Linda.

MR. BEIDEMAN: Yes, Gary. If you want to go ahead and encapsulate where you think we are. And then if I get to comment, I will just go through my comment in the order that you have got it there. I have got no problem with that.

MR. MATLOCK: Ron.

MR. WHITAKER: I just want to say that I agree with most of Russ' comments. I want to say that North Carolina in my opinion and in a lot of other fishermen is going to bear the biggest impact on this closure being right at the north end. And I would just like to point that out.

MR. MATLOCK: Nelson, why don't you answer the question then for Linda, and then I will try to do the consensus stuff.

MR. BEIDEMAN: Linda did raise some very, very important economic impact issues. And we had to look very, very seriously at those issues. And the key, what we came down to, is not only is the buy out a mitigating key, but keeping the offshore boundaries as insure as possible and still resolving the problem of bycatch and conflict is key to our feeling that we will probably not have large displacement problems. That we will probably not have many fish dealers and related businesses going out of business because of displacement problems.

And we could even have a reduction of effort in the mid-Atlantic bite, because some of the boats that used to go up to the mid-Atlantic bite will not be further offshore and out of the key bycatch areas, but now have a big incentive to fill the market void that will be created by the small tremendously productive vessels that go in and out, in and out, and in and out in that insure area, that nursery ground area. And those vessels do not have the ability to fish further out. The medium and larger sized vessels do.

We think that they are going to stick there and fill that special quality highest premium fresh market that has been built up by those vessels. And we expect as many as 12 or 15 less boats in the mid-Atlantic.

So those of some of the issues that we have had to look at on displacement. I know it is anecdotal and we cannot prove it. But the industry has a pretty good damn idea of what the impacts are going to be.

MR. MATLOCK: Okay. Let me give a shot at there is, and see how far off I am in terms of what folks have had to say. The first one that I think that there is agreement on is trying to deal with the bycatch issue in this fishery using time and area closures relative to this gear is a generally reasonable thing to do. Let me see if there is any disagreement with that. Okay.

The second one is that the closure in the Gulf of Mexico appears to be in need of modification to deal with generally unknown displacement of vessels and/or effort that would occur because of our proposed closure in the northwest Gulf.

The displacement of effort may or may not occur, and to what extent it will or will not occur. We really have not heard much today in terms of agreement on what that amount is or is not. But there is the issue of displacement of effort that needs to be dealt with in our proposed rule from the western Gulf to the eastern Gulf, and in particular the Desoto Canyon.

Let me say first, Mau, is there any disagreement with that being an appropriate summation of your opinions?

MR. CLAVERIE: It includes vessels displaced from around the Atlantic side too, not just those.

MR. MATLOCK: Yes, yes. Our closure as proposed in the western Gulf is in need of some modification, because of the potential impact on the open area in the eastern part of the Gulf.

MR. CLAVERIE: When you say potential impact, you are right. When you say unknown, you may not be right. Because they have all said they are going to do it.

MR. MATLOCK: Well, we have a difference of opinion I believe by the members who have spoken. So I do not think that unknown would reflect it. I think that potential is probably a better description from what I have heard. So let me see if there is any disagreement with the capturing of that notion from you. Steve Berkley.

MR. BERKLEY: That in its broadest interpretation may have encompassed what I was talking about. But what I was questioning was the area closure itself, not just the displacement, but whether or not that was the most effective area to close.

MR. MATLOCK: Steve Loga.

MR. LOGA: Real quick. Those boats will move to the eastern Gulf, because mainly only one of them is involved in the buy out. So you can figure the whole 60 to 70 votes moving to the eastern Gulf of Mexico.

MR. MATLOCK: I understand that is an opinion. We have heard different opinions from people on the panel with no real data provided. And I would not want to go so far as to saying that there is agreement that there will be displacement to any particular degree. Again, I am trying to capture all of the comments that I have heard, so I do not want to put words in people's mouths.

Let me see, we have got three. I am sorry. I do not recognize you, and I cannot see the name card. I am sorry, Glen. And then Russ Dunn, and then Russ Nelson.

A PARTICIPANT: I wanted to go back to the first consensus area that you were talking about, the general agreement on time area closures. And I wanted to ask the question as to why as part of this proposed rule that there had not been a consideration short of year round closure in the south Atlantic, or maybe closures throughout different areas for shorter periods of time, like into the mid-Atlantic bite, and sort of spreading the economic dislocation that would be caused by this year round closure within the southeast region.

MR. MATLOCK: I could be wrong, but I think the reason why that was not included as an alternative to be considered was that we simply did not think of it. Or if I am wrong and we did think of it, because of what has occurred in other areas, there are enforcement issues that play a role in terms of monitoring those rolling closures as they might occur here.

I think though in terms of the first consensus thought I heard, whether it is a rolling closure or a year long closure in different areas, it really does not

affect the consensus that I heard. And that is that time/area closures are an appropriate way to go about trying to reduce the bycatch in this fishery.

The specifics of those closures, I do not think that we have gotten an agreement on beyond the one that I am trying to see if I have captured correctly yet. So with that, Russ Dunn and Russ Nelson.

MR. DUNN: Just to clarify, my mention of the Desoto Canyon was not solely related to concerns over effort displacement, but also just as an additional area which need to be examined in determining the final closed areas to maximize bycatch reduction.

MR. MATLOCK: Thanks, Russ. Russ Nelson.

MR. NELSON: Gary, I believe that anyone here --

(End side A, tape 3.)

MR. NELSON: -- being a displacement of effort from the western to the eastern Gulf.

MR. MATLOCK: I would ask Jack Devneu or Nelson to address that, because I thought I heard thought kind of thing from both of them, but I could be wrong. Let me do Jack first, because he wanted an opportunity to talk anyway. Jack.

MR. DEVNEU: What I was going to talk about earlier really is not on point, so I will reserve that if you do not mind. With respect to the question at hand, I think I always liked the word potential rather than unknown. I do think it has there potential. I think that conveys the sense. I think that there is certainly a likelihood. Steve would know far more bout it specifically than I would, but I am comfortable with potential.

MR. MATLOCK: Nelson.

MR. BEIDEMAN: I think potential does fit. As far as what we believe on displacement with the proposed rule, we believe that there is maximum displacement. We believe that at least between 90 and 100 percent of the boats from the western Gulf will move immediately into the eastern Gulf. As far as minimizing it, we again suggest the legislation, and keeping the offshore boundaries insure with the legislation. We expect minimal displacement especially in the Gulf.

MR. MATLOCK: Before I go on with the others and what I think I heard as well. What I would suggest that we do from NMFS' standpoint is to write down what it is that we think we agreed to, what we think you have agreed to as far as a consensus. We will give that back to you up on the screen this afternoon at some point. If there is a problem with the words that are there, you then can spend as much time as you want trying to correct those problems. So if that is agreeable, I will go ahead and try to get the concepts at least down to what I think I have heard. And then we can haggle some more this afternoon some more, if you like.

The third one that I have is that there is a desire it seems for us to consider in the proposed rule beyond what we have done the possible inclusion of some gear modifications. Examples have included circle hooks, live versus dead bait, length of line, and so on. So I think that there was really no disagreement thought those should be items to get further consideration. Gail.

MS. JOHNSON: Just to be a little bit more precise about it. Those gear modifications that have been shown to have practical effects, okay.

MR. MATLOCK: Nelson.

MR. BEIDEMAN: There is a tremendous potential in circle hooks, and a tremendous potential in prohibiting live bait. There is potential in depth of gear, different bait types and soak times. But it has been our thought that those potentials needed substantial study prior to making them into required measures. If you are talking about replacing and an onerous time/area closure in the Gulf with a measure in the Gulf for prohibiting live bait, that would be one thing. But if you are talking about measures on top of measures, you know, I think you are going to have much more complicating impacts than we are discussing here.

MR. MATLOCK: I understand that. There are three other folks who want to talk. But I am very sorry that I am going to have to leave, and Rebecca is going to have to finish up what we are doing. Let me make sure though that you know. In the current proposed rule, there are no gear modifications included. And so what we are trying to get from you as a group is something about what you have had to say relative to gear modifications.

So there is no attempt here on my part to say thought it should be done instead of or in addition to. It is simply that there are gear modifications that you have identified that have the potential for further addressing the issue of bycatch reduction.

Let me do this, if I may. Let me give you the others that I have captured. Rebecca can then pick up, and you can beat on these and not agree with them, or agree with them as you so choose.

The next one is I think we heard that there is a desire on your part to have us consider alternatives to the time/area closures that specifically include closing the Gulf in the area 500 fathoms or less; and in the Atlantic, I believe it is 250 fathoms or less. So I did not hear any objection to our considering that kind of item. Mau.

MR. CLAVERIE: You heard it from me. 500 fathoms is too close to shore off of Louisiana and Mississippi, or at least Louisiana east of Grand Isle.

MR. MATLOCK: I did hear objections to doing that kind of closure, but I did not hear an objection to our including it as an alternative to look at. And in fact, on our part, given that you have had a discussion about it, it would probably be foolish not to have it addressed in the environmental assessment that we do, because you have raised it as a group as a possible alternative.

The last two I have is that there is not consensus but there was discussion about a delayed effectiveness of the proposed rule, adopting something but implementing it at a later time. Because that did get so much discussion, it seems worthwhile our having that come from you as a group as something we should consider.

The last one then is the need for us to identify our recognition or at least addressing the possibility of vessels moving from the HMS fishery into the fisheries that are managed by somebody else. And the potential impact that could have on species not managed under the HMS provisions. I think I heard that two or three times, that that was something that we should pay attention to.

So with that, I do not have anything else that I heard, even sort of a vein of agreement or repetition enough to be listed in something that would be coming from either the HMS AP or the Billfish AP. So I will leave you with those summations. If there are other things that you think should be included, obviously we can tackle those further.

I will do Bob Hueter and Bob Zales. And then I am sorry, I have got to go. Bob.

MR. HUETER: Just real quick, Gary. This may have been between the lines, but I

think that there was a consensus opinion about a commitment to evaluate the effectiveness of these measures.

MR. MATLOCK: Yes, I certainly agree, Bob. Bob Zales.

MR. ZALES: it does not have anything to do with this. You are not going to be here, and this has something to do with a comment that you made at the very first meeting that I attended and a discrepancy in a document. And I just wanted to get a clarification if I could, being that you are here.

MR. MATLOCK: Can we do it, and not hold everybody else up, unless you think that everybody needs to hear it.

MR. ZALES: Because everybody was here when you made the statement before. It had to do with the question that Mau asked you at the very first meeting that we attended.

MR. MATLOCK: All right. Well, give it a shot, and I will try to answer it.

MR. ZALES: At the very first meeting that you attended, Mau brought up the issue about me being a recreational representative being in the charter for hire sector. And you made it clear at that meeting that charter for hire was a recreational sector. In this document for assessments, on page 79, there is a clear statement here at the top of the page that says, "The charter head boat fishery is a commercial sector, and is discussed in more detail in Section 4.3." I need to know where that came from and why that is in there referencing me as a commercial sector.

MR. MATLOCK: Rebecca tells me that the SAFE Report is on the agenda this afternoon.

MR. ZALES: I understand. Because you made the statement at the first meeting, so that is all I really need to know from you. I can take the rest up with her.

MR. MATLOCK: Sure. What I hope I said at the first meeting, and I will say again hopefully correctly, is that the Magnuson-Stevens Act in its definition of recreational fishing includes charter fishing as an recreational activity.

MR. ZALES: Right.

MR. MATLOCK: I hope that is what I said then, and it certainly is what I say now.

MR. ZALES: Right. That is exactly what you said. I just wanted to be sure that is exactly what I heard.

MR. MATLOCK: Okay. Unfortunately, I have to leave. I think that the discussion has been extremely helpful and productive. I am very grateful for your frankness in trying to stay on the point of our proposed rule. I will turn this over now to Rebecca, and let her carry on for the rest of the day.

MS. LENT: Thank you very much, Gary. And I hope you can stop by again, and have some more fun with us.

Let me just make a quick comment. When we were out at the public hearing, some of the things that we are hearing a lot about are live bait and this issue of rolling closures which was just brought up I think by Glen. And we would like to make sure that we have an opportunity to discuss that here. And we specifically request from you comments on that, if not here then in writing. So Jack, go ahead and make your statement.

MR. DEVNEU: Thank you. I did want to go on the record. I made the comment last

night as part of the public hearing but not as an AP member I guess. So at this point on this subject as an AP member, I do want to make the comment that I am going on record as not supporting the proposed rule. There are a lot of holes in it, and I have gone into detail on that before. And they have been pointed out before, most particular dealing with dislocation and redirection of effort, and several other points.

The other thing that I wanted to comment on was that I heard a lot of discussion around the table of expanding closed areas as a nice first step. If you extrapolate out these comments, where it ultimately takes you is to an unviable commercial fishery. And I think that this goes to the heart of what fisheries management is all about.

To me fisheries management has got three goals. One is you manage it, so you get a healthy stock. Once you have got a healthy stock, what you then do is make sure that you have healthy user groups, among them a commercial fishery, and among them a recreational fishery. And because you have healthy stocks, the nation derives the benefit from the healthy stock. The sectors utilizing the stock, that is a benefit to the nation. And the consumer reaps the benefits from this management as well.

And I think that is something to keep in mind because the stock is getting better. And one of the subjects that Gary just brought out on his five points, point number three, that it is very important to understand that you cannot go ahead in a fishery that is already recovering without any measures being taken under the proposed rule go ahead and have time/area closures, and have circle hooks, and have fewer soak times, and have something else. You cannot heap these. There is some either/or that goes here.

And you need to evaluate. I would agree with what Russ said, and David, and some other people. You do have to measure the effectiveness of the measures that you adopt, and that means giving them time. And that is one of the reasons that there is a period of time in the proposed legislation. And that is precisely what it is for, to give it time. Let's see what the effect of these rules are. We are already going in the right direction. Let's not throw out the baby with the bath water.

And the commercial fishery has every bit of right to prosper and reap the benefits of its sacrifices as anybody else out there. Please do not lose sight of that. Thank you.

MS. LENT: Thank you, Jack. We have Jim Donofrio. Maybe just one or two more comments before we wrap up for lunch. Mau and Nelson, very briefly, please.

MR. DONOFRIO: Rebecca, when do you want us to talk about the live bait issue, after lunch?

MS. LENT: Talk about it now, please, as quickly as you can.

MR. DONOFRIO: I am just kicking this out from my own experience. Live bait is very, very effective on HMS species. In speaking to a friend of mine from Florida the other night where we used to long line, he tells me that this live bait fishery is very effective, and in fact they are using it right now.

And I know at the ICCAT meeting prior to us going overseas that we had talked about some scenarios about not having the minimum sizes, and also the long liners keeping everything they catch. So there is no bycatch. Whatever you catch, you bring in.

The only way I can from my experience, and I do not if Nelson can tell me or some of the long liners, but if you are going to go to a live bait fishery and allow it, then you are going to have to get rid of the minimum size and let them take everything they catch. I cannot see having live bait and then having your discarding. Because I know that from my experience that live bait, that

they eat it aggressively, and anything eats it.

MS. LENT: Mau, quickly, please.

MR. CLAVERIE: This rolling time area closures you are talking out, it is not new. It is what the five councils tried to adopt in the mid to early 1980s, and it was rejected by NMFS, big NMFS.

MS. LENT: Big NMFS, okay. Nelson, quickly, please.

MR. BEIDEMAN: On the rolling closures, the problem is that they would not be as efficient as centering on hot spots. We are looking at solving about 65 percent of the problem, and only affecting about 25 percent of the fleet. That is quite efficient. You would have to have such large areas, and you would have to go into international waters with any kind of equitable rolling closures as far as the fishing mortality side of it.

It is a shame that these bycatch problems are primarily centered in the warmer waters south of Cape Hatteras, but that is the honest to God truth. The data verifies it. The last thirty years of data showed these as nursery grounds and bycatch hot spot areas. So that is all I can say on that.

MS. LENT: Okay. Here is what I suggest we do at this point. We will take a one hour break for lunch. Please listen, Joe, don't leave yet. I would like to suggest that you grab a sandwich next door and come back within 15 minutes at 12:45, so we can have a working lunch session on the bluefin tuna issues, which we did not have a chance to fully discuss this morning. We will start then at 1:30 with our agenda as we had it. What we are doing now, EFH, very brief intervention on EFH, and a little bit on some rule making coming up. We will touch on the shark drift gill net observer program that Bob Houter asked about. And then take a quick break. I would like to discuss the SAFE Report, and give it enough time that we can take a good look at it.

And then we will come back to the time/area closure. We will put up on the screen the seven or eight areas of potential consensus that Gary mentioned, and continue our discussion. I think that we can go to 5:30 if we need to, and take it from there. Does that sound okay? Thank you very much. We will see you in fifteen minutes.

(End side B, tape 3.)

(Begin side B, tape 6.)

A PARTICIPANT: -- the west, the north central, and the east. And this also includes the north central. But as I understand, Bob, you do not agree with that, right, that the closed area ought to be modified to deal with potential displacement into east of Grand Isle?

MR. ZALES: I think that there are 40 boats in Texas. And if you put that closure, and if those 40 boats do not qualify, I heard somebody say only one. So those boats would be displaced. And I thought that was what we came to a consensus on, that that is a problem that we need to look at it. And that is all. I was not too concerned about the middle of the Gulf or wherever, wherever that boundary is east of it is what I was talking about.

A PARTICIPANT: Well, it sounds to me like you are calling for the word "consider" instead of "do," consider that instead of doing it. That kind of needs to be modified. But we need to consider modifying it to deal with that issue.

Are you actually saying that you want it done, are you going to go along with the Gulf Council?

MR. ZALES: No comment.

A PARTICIPANT: Bob Hayes, and Bob Houter, please.

MR. HAYES: This is one of these devils in the details. It needs to be modified. Now there are two things that could be done. Your proposal is to close the western Gulf all the way out to the east from the 90 degree longitude line out to Brownsville, Texas, and that will displace 40 vessels.

There are two ways in which that proposal can be modified. One is the way in which half of this group would love to have it modified, which is to extend it all the way to the eastern Gulf. Of course, you have not proposed that in your rule. And therefore, you are going to be barred by any kind of administrative procedure routine from proposing that in a final rule. So that cannot be done. It is a nice idea, but that is not going to get done.

So the only other way that you can modify that is to prevent the displacement. The way you would prevent the displacement is you take the six month closure that you proposed and the size of that closure, and you shrink it down to something that will not displace those vessels, and something that the area will allow them to continue to fish. Now that has modified it to prevent the displacement. That is certainly the thing that can happen here.

So my personal view is that I do not happen to like an idea that takes a six month closure and makes it, I think to prevent displacement, what would you guys say, six weeks, would that prevent displacement, six weeks, something short like that? Maybe going out to maybe 500 fathoms and making it for six to eight weeks. That would prevent the displacement. That is a modification that definitely could happen under that fine consensus rubric that we have got out there. My suggestion is that we decide which of those two things people are talking about in that statement.

A PARTICIPANT: Thank you, Bob. Bob Houter, please.

MR. HOUTER: I was not aware that we were making those decisions here. What I am uncomfortable with is the finality of this language that sounds like the panel decided that modifications must be made. All I have heard today is just uncertainties about both the benefits of this area closure as well as the effect of the displacement factor. So I think that we need to reword this to say that the closure needs to be studied, or needs to be further addressed. It is the point thought Mau made and stole my thunder. Rather than say we have made this hard decision based on information given to us that modifications are in order for sure.

A PARTICIPANT: Okay. I think that the rest of them are more couched in consider this or consider that. Bob Zales, quickly, I guess.

MR. ZALES: On Item No. 2, I do not think that the discussion has been if that is going to happen. I think that the discussion here is that it is understood. I know that it is understood by everybody in the Gulf of Mexico. If you close the western Gulf of Mexico from that line west of the river to Mexico, those boats are going to the eastern Gulf of Mexico. There is no if, and, or buts about it. Everybody has agreed that will happen.

So it is not a question that maybe they will not, that they will just decide to sit home and do nothing. They are not going to do that. They are going to go to the eastern Gulf and fish in an area that they have not been fishing in to catch what they can catch period. So something needs to be done to take care of that situation, because that will happen, and it will be a tremendous problem.

A PARTICIPANT: Thanks, Bob. David.

A PARTICIPANT: We are not going to get a consensus here, because Bob

articulated far better than I could our problem. We support the closure. We want to add additional areas to mitigate the effects of displacement, which is very different from what is in that one. So I do not think that after that I just said that there is going to be any consensus.

A PARTICIPANT: Okay. How about considering the inclusion of gear modifications, i.e circle hooks and live baits. Who had their hands up first? I was not looking. Mau, David, Glen, and Rusty.

A PARTICIPANT: This is where Gary left. And I was about to suggest based on comments by I believe it was Nelson, I do not remember, that maybe we should say research and consider inclusion.

A PARTICIPANT: David.

A PARTICIPANT: Again, my concern here is similar to the second one. We fully support using only closed areas to reduce by catch by the long line fleet at this time. We would not want this to read in any way that you must now consider gear modifications in this proposed rule, and that it possibly could even be at the expense of closed areas. We support further research into the use of gear modifications to further reduce bycatch. It could in no way be used to offset the reductions that would be gained by closed areas.

A PARTICIPANT: Glen, and then Rusty, and then Steve.

A PARTICIPANT: (Inaudible.)

A PARTICIPANT: The whole thing for No. 3 is up there.

A PARTICIPANT: My point was pretty much covered by Mau. I wanted to reiterate that it should be a commitment to research and to gear modifications that could have impacts.

A PARTICIPANT: Rusty, and then Steve.

MR. HUDSON: In the earlier literature that has been produced in this HMSF&P, it was talking about voluntary use of dehooking devices. There are at least four different styles that I know about. And I do not see anywhere in this current literature any kind of move towards that direction at all.

A PARTICIPANT: Okay. Steve, and then Bob Hayes.

A PARTICIPANT: I probably would take it the opposite way from Dave. Instead of an addition to a closure with the gear modifications, make it an instead of.

A PARTICIPANT: Okay, Bob Hayes, please, and then Nelson.

MR. HAYES: I was looking at this, and I think this research idea is the right idea. And I think that Dave is right. We have talked about these kind of measures for years. And we have never gone out and done a legitimate kind of a bycatch reduction, a long line bycatch reduction study, that essentially would allow us to really look at in a comprehensive fashion what it is that we could do. And then impose subsequent to the research the kind of regulations that make some sense.

I would suggest that what we put up there is not so much the inclusion. That sort of suggests to me that we are talking about a regulatory thing there. I would suggest that what we be talking about is consider a long line bycatch reduction research program to include gear modification, and all of those things you have got up there. That is how I would see how that provision would read.

MS. LENT: Are there any objections to Bob's suggestion? I did hear research,

research. Even the people who disagreed relative to that.

A PARTICIPANT: Let's go ahead making note of those comments. There is another comment that can be discussed. Who has their hand up on this one? Nelson first, and then Rusty.

MR. BEIDEMAN: I strongly support what Bob put forward there on the research program. You might want to broader gear modifications to include operational strategies. I do not know if that is necessary or not, but fishing practices. It should look at more than just the circle hooks and live bait. It should also be things like depth and soak time, tending the line, and things of that nature.

A PARTICIPANT: Rusty, please.

MR. HUDSON: I have a clarification problem in my mind about something that I think I heard the aides say earlier about a four year moratorium on any further time area adjustments, or am I missing that somehow?

A PARTICIPANT: I think you missed it. Let me explain exactly what is in the bill with respect to this thing. Because this is easily the most lied about provision of any statute I have seen proposed for a long time.

There is a provision in this bill -- and I would propose for those folks who have not read it that they ought to read it -- that essentially says this. It says that until the research is done, and there is a bycatch reduction research program in the bill, it says that until that research is done that the National Marine Fisheries Service is precluded from making any adjustment in any of the time and area closures. That would be the sizes of them or the times of them. And it specifically prevents them from doing that.

It does not, however, prevent them from doing gear modifications, vessel modifications, trip modifications, any other spectrum of regulations that is available to them. Now there is somewhat of a drafting area. We talked about this with the environmental community and others. The way it is drafted is that it specifically refers to HMS regulations. I think it was the government, but I do not remember who told us first, but it has an impact on turtles. And turtles are covered under the Endangered Species Act, and it may have an impact on marine mammals.

We are in discussions about that particular obstacle. And we will go ahead and so something, I am certain, about that particular obstacle. But the concept that there is something in this bill that ties the National Marine Fisheries Service's hands from doing any more HMS regulations for the next four years is pure balderdash.

A PARTICIPANT: That was not what I was trying to get at. It was the time/area closure expansion. You were indicating earlier that to repropose it would be the only way to be able to get to a final rule. And right now, unless they repropose a total Gulf closure or else the addition of the mid-Atlantic bite, et cetera, then we have a four year moratorium on ever going there.

A PARTICIPANT: Let me explain. There is a distinct difference. I will do it quickly. If you had a piece of legislation in place, it would play out exactly as I just told you, which meant that you cannot adjust those time and area closures for four years, the ones that are put in legislatively. If you do this administratively, which is what the agency is proposing, they have a requirement that they have to propose essentially the most onerous impact.

You cannot go out and propose, for example, closing the western Gulf, and suddenly say what we are going to do here is close the entire Gulf. Then we would have to go out and repropose that. But that is not a four year deal. They could go out tomorrow afternoon and propose that if they wanted to, because it is covered in their EIS.

A PARTICIPANT: If you did repropose, that might mess you up on your May 1st date, wouldn't it?

A PARTICIPANT: I will let the lawyers talk about that.

MS. MCCALL: I just want to add something, and I do not want to have a debate about this with Bob. I do not necessarily one hundred percent agree with Bob. What we would have to do is we would have to go back and look at not only what we proposed, but what all of the alternatives are that we analyzed. The legal description is that we can do something in the final rule that is a logical extension of what we proposed. And then you also have to consider the extent of the analysis, and the public comment, and the public involvement.

So it is not quite as black and white as what Bob said. The conclusion when we do that analysis might be that we did not include a broad enough range of alternatives to choose from among one of those and make a difference in the final rule. So we might have the same result, but for not quite the exact same reason that Bob said. So even though I know that in 1977 that he did write a legal opinion that I was just reviewing, I should defer to my elder.

MS. LENT: We have got to move on.

A PARTICIPANT: Again, this is another point that was discussed that Gary picked up on.

MS. LENT: Mau.

MR. CLAVERIE: I objected to it when he mentioned it, because 500 fathoms is too close to our front porch.

A PARTICIPANT: Okay. Just an example, a range of depths. How about consider delayed effectiveness? That was another one that was brought up, and there was discussion back and forth on that issue. David.

A PARTICIPANT: Do you mean delayed implementation of the rule? I would really hate to see delayed effectiveness.

MS. LENT: That is what folks are saying. Publish a final rule May 1 as planned, but that the effectiveness would be delayed. It has to be delayed at least 30 days for a cooling off period, and maybe it would be delayed longer.

A PARTICIPANT: It seems like it could be worded a little better. We strongly opposed having any delay in implementation or whatever other term you want to call it. There has to be the 30 day cooling off period, that is fine. But consider, no. We opposed it strongly. We do not see any reason why NMFS should consider that option at all.

A PARTICIPANT: Okay. I guess the remaining ones. There was another issue that Gary talked about before he left real quickly about the impact of displaced effort into non-HMS fisheries, and several people had talked about that. Are there any other issues? Yes, Bob Hayes.

MR. HAYES: I have just got one thing on this delayed effective date. And this is not particular to this exact issue, but I think that this is an important consideration, having argued this once at the Gulf Council. When you put highly onerous regulations in place on an industry, the APA clearly requires you to give them time to adjust to the onerousness of that regulation.

Now I do not have a factual pattern here that says that is what is happening here, and I do not know what is in your record. But I will say that as a person who has argued very strongly when we put bird regulations in place, that we asked the agency to postpone those for six months. That is not an unknown

practice, and it is not an inconsistent practice. In fact, I think you are required by the APA to do that when those regulations are onerous enough that they require industries to adjust to them.

A PARTICIPANT: Thank you, Bob. Is there any other comment on that particular one? Irby.

MR. BASCO: I have a question for Bob. If he can give us some kind of time frame on the proposed legislation, the so-called Breaux bill, about when it will be in effect.

A PARTICIPANT: You would have to ask Senator Breaux, I think. There has been a hearing in the House, and there has been a hearing in the Senate. There will be no further hearings in the Senate. There are proposed two more hearings in the House. A normal authorizing bill, you probably go through a committee structure. Assuming that the bills are the same, it would move relatively quickly at that point.

I think that the reality is that these folks have got a requirement that the agency publish a regulation on the first of May, and I think that everybody is aware of that. I see it as highly unlikely that you could go through a normal authorizing and appropriating process, and make it by the first of May. I see that as highly unlikely activity.

But I also see that we have plenty of time between now and the first of October when Congress will leave us gracefully for the election to pass a bill. I do not know if that helps you. But there is an orderly process up there, and people are working on that orderly process. And I think that a number of people here have testified, and so we will see if that process moves long.

A PARTICIPANT: Thank you. I guess the sixth one about the displaced effort into other non-HMS fisheries. Either that or on the research issue. Yes, Nelson, please.

MR. BEIDEMAN: We are running through these so fast. I would have to comment on each and every one, if we had the time for it. What are you guys taking down? I mean Gary pretty much recognized these as points of great consensus. It is not unanimous, but some measure of consensus. Are you writing down that there is one person that objected to this, or two to that, I mean how is this being recorded?

MS. LENT: Nelson, we do not vote on the HMS panel. Since this is a blended panel, we are not voting and doing one for and two against. It would not be appropriate. What I have written down so far is that number one is the only one where we found consensus. Now it may be that if we stayed here until midnight and we wordsmith that we might get a couple more of them on consensus.

We may be leaning toward consensus on some research items. But as Linda and some others are pointing out, how relevant is that to feedback from the AP on the proposed rule. And we all know that we need a lot more research. God knows, I wish we had the simple answers to a lot of these complex questions.

What I have written down is one, yes, everybody agrees. Two, three, four, five so far, no agreement. So we will see about six and seven. That is what I am writing down.

MR. BEIDEMAN: Didn't we agree on one that Buck wrote down, which one was that?

MS. LENT: Number one.

A PARTICIPANT: Bob Spaeth and Bob Houter.

MR. SPAETH: I thought that there was pretty much a consensus on number two

here. Is there anybody here who did not think that we had consensus on number two?

A PARTICIPANT: Well, we did, everybody agreed.

A PARTICIPANT: Okay.

A PARTICIPANT: We were concerned about shrinking it instead of expanding it.

A PARTICIPANT: Yeah. As I am looking at this, this is a concept. And I think that we are getting too nit-picky. Do we want the agency to adopt some programs or options with these in there for the HMS to discover at a later date? I think that is what Gary was looking for. And a general consensus, not a hundred percent consensus, you know. If one guy or two guys back out, you say they are the majority or whatever, and move on.

MS. LENT: Some of the concern there, Bob, and Nelson and others have expressed this from time to time that they feel that they are really in a minority. And if you say it is consensus, as long as most people agree, that could be a problem. I go back to what I said the first time that these advisory panels ever met in the fall of 1997, when I said we are learning from the debate. We do not necessarily have to come up with the perfect phrase. But when I hear the comments that people are making, I am learning from the debate.

It would be nice if we could get some consensus points here. I think that we want to make sure that we get good discussion behind the issues. Steve, did you want to intervene relative to No. 2?

A PARTICIPANT: Well, I was just going to say that when Bob said that there was general consensus, I did not agree with it. You can modify it very quickly to satisfy me to say that the Gulf of Mexico closure may need to be modified, and leave it at that. And that would be fine.

MS. LENT: Your concern was not because of displacement, but it had more to do with the area itself and the effectiveness?

A PARTICIPANT: I would be happy to share some numbers that I pulled out, if you want to discuss it in that detail. But I do not see that there is much of a gain for a considerable loss in target catch, and a greatly increased discard of some species, and a modest reduction and discard of some other species. It is not a hot spot. It clearly is not a hot spot for anything.

MS. LENT: The point would be the Gulf of Mexico closed areas need to be modified based upon effectiveness as well as potential displaced effort, or something like that.

A PARTICIPANT: And competition.

A PARTICIPANT: Okay. Bob Houter.

MR. HOUTER: Please feel free to tell me no. Can I ask for a simple point of clarification on their four year rule in the legislation?

A PARTICIPANT: (Inaudible.)

MR. HOUTER: I just want to propose this hypothetical. Suppose that the closures go into effect in the rule, and it is very quickly learned through research that because of displaced effort in response to those closures that bycatch of keystone species triples. How will this four year limitation limit NMFS ability to respond to that situation?

MS. MCCALL: If the legislation passes.

MR. HOUTER: Sure, if it is in effect.

MS. MCCALL: And then we find out that there is a problem with those area closures. Bob, what do we do, our hands are tied for four years, Congress has to act fast, right?

A PARTICIPANT: What is a keystone species, what is that?

MR. HOUTER: One of the species that we are looking at in the assessment obviously, the under-sized swordfish or whatever.

A PARTICIPANT: Okay, okay. Bluefin tuna, let's use bluefin tuna as an example. Let's assume that after the legislation goes into place, that there is a crisis in the bluefin tuna fishery. And unless we modify the closed area in the Gulf of Mexico, we will have a calamity in the bluefin tuna fishery. Is that a decent way of looking at it? Okay. If that is the case, then as it turns out, the National Marine Fisheries Service has to basically figure out that if ICCAT did anything about. Can they do anything about it? That is one of the findings that they have to make. I think they would find out that they cannot.

The second finding that they would make is that they would have to contact the commissioners. I think that is in there. So they would have to do that. They would have to determine that in fact it was a resource emergency. And if they did all of those things, they would have to issue a regulation which would modify the time/area closure, because that is an emergency.

A PARTICIPANT: (Inaudible.)

A PARTICIPANT: I think that Jim had his hand up, and then I know Bob.

JIM: We have a very different interpretation. In my testimony, I provided a full page. The hurdle is very, very high, Bob. NMFS is prohibited from taking action, and this is their language, except in three very limited circumstances, and Bob touched on a couple of them. This hurdle is very high. We cannot kid ourselves.

The Secretary of Commerce does not take emergency action in situations where most of us around this table would agree it is an emergency. It is not something that the secretary does very often, Bob. The odds are that we would have to have bluefin tuna or pelagic sharks go more than down the tubes before we would see the secretary take emergency action.

Anybody who wants to read the language, and this is the exact language, can interpret for themselves. But we would not see a closure in that four year period. I feel very confident sitting here saying that.

A PARTICIPANT: Okay. Can we get back in order here. I guess Jim, and then Bob Zales, and then Nelson.

MR. DONOFRIO: I have an additional comment now based on the ongoing debate here. In all respect to Bob, he is probably right, you had an emergency rule. But the same people in the long line industry thought are involved in the legislative process would then be lobbying their senators and congressmen to stop daily from doing the rule. We know how this process works. So therefore, you have got resistance from this end. And that is a no brainer.

In any event, I think that there has to be a lot more discussion. We encouraged NMFS to move forward, and that does not preclude us from moving forward with legislation also. We are trying to work with Mr. Saxon trying to get a buy out program that works that is fair for these displaced families, et cetera.

But we need to listen to Bob Zales and the other people from the Gulf of

Mexico. Because we are learning now that is not our area, local knowledge. I think that you need to get into this a little more.

MS. LENT: I would just make a quick point. Our seven points of consensus have now turned into an aquarium, because we are going into the bills. It is good to talk about the bills, because we have got all of the players here. But maybe in the next ten minutes, we can focus on the last two items on the list, and see if they are yes or no consensus items, and I will get that back to Gary.

A PARTICIPANT: Bob, you had a point.

MR. ZALES: I am going to do one more thing on this Item No. 2. And I take exception a little bit with what Bob has said, and also with what Mariam has said with my experience in dealing with the Gulf of Mexico Fishery Management Council and our noted attorney, Mike Macrimore.

He has consistently stated to us that when you go to the public with a proposed amendment or any kind of a proposed change and you go to public hearings, regardless of what preferred alternatives are on the table, as long as rejected alternatives in the entire package includes just about everything you can do to the most restrictive point, that you cannot do anything less restrictive and you can never do anything more restrictive.

So I would argue by that advice that Item No. 2 in the worst case scenario that if you chose to close the entire Gulf, even though you went to the public saying that you are only going to close half of it, the fact that you discussed it in that paperwork that was presented to people, and the fact that the charts are in there for the whole Gulf, and there is information about what will happen by closing the whole Gulf, that would satisfy all the rationale to make that argument there.

So, you know, it is clear to me that the consensus was like it is, and whether you change it to what Steve wanted to have in there, that that language is clear that effort is going to be displaced and it is going to move if you only leave that one closed area and do not do anything else about it. That is an absolute certainty.

MS. LENT: Bob, by the way, you agree completely with Mariam. You are in the same mind set. That is what she said. So maybe under No. 2 again, let me just suggest, I hate to start wordsmithing, but maybe this would do it. "The Gulf of Mexico closures may need to be modified based on effectiveness as well as displaced effort." I will read it again. "The Gulf of Mexico closures may need to be modified based on effectiveness as well as displaced effort."

I think, Mau, it includes your problem. Your problem is displaced effort coming in and intervening with the recreational guys, right?

MR. CLAVERIE: Yes, but that needs to be stated, particularly since you told us that you did not consider it.

MS. LENT: Okay. So Mau disagrees.

A PARTICIPANT: Okay, Nelson, I believe you are next.

MR. BEIDEMAN: We were close. Mau was just looking for a user group conflict. And I think that everybody here pretty much agrees that user group conflict should be minimized to address, reduce, or whatever we can do with it.

MS. LENT: Okay. Let me try this one. "The Gulf of Mexico closures may need to be modified based on effectiveness, displaced effort, and user group conflicts." Is that okay?

A PARTICIPANT: (Inaudible.)

MS. LENT: User group conflict and competition.

A PARTICIPANT: (Inaudible.)

MS. LENT: User group competition.

A PARTICIPANT: A couple of things. I disagree with David when it comes to the emergency. I have seen us come home from ICCAT, and the secretary implement ICCAT measures by emergency action, if there is going to be a month or month and a half lapse in getting the measures in place.

MS. LENT: Nelson, can we please stop the discussion on the bills. I am sorry, we are just out of time. Maybe you guys can discuss that at 5:30, but we have got to clear this room at 5:30.

MR. BEIDEMAN: It was not on the bills.

MS. LENT: The emergency thing, is that not what you are addressing?

MR. BEIDEMAN: I did not raise it.

MS. LENT: I understand, I understand. We just need to cut out the discussion. And you guys please carry that on at 5:30.

MR. BEIDEMAN: I have another on the points. Again, I think Mau was about the only one who had a problem with the 500 fathom and 250 fathom. And I would say that everyone should look closely at the data including the new observed data. Mau, something on the order of, because I do not intend this to be different than the modifications that exists in what I am not supposed to talk about.

But would something on the order of roughly 500 and 250, or approximately 500 and 250, would that satisfy?

MR. CLAVERIE: The modification that you are not talking of just barely touches 1000. And people are not happy with that that I am talking with. So I cannot speak to that.

MR. BEIDEMAN: I tried.

MS. LENT: Okay, thanks. Let's read point No. 2 one more time. Yes, sir, John Jolly.

MR. JOLLY: Let me just say that I think the club, all of our members and most of our constituents, would pretty much accept this format as far as we are concerned. In the interest of making some headway, we would expect you to do your due diligence to cover all of these particular points. But I think we are wasting a lot of time here. We are trying to give you a guideline so you can make some headway. And as a taxpayer, I can tell you that I hate to see us wasting too much time. It costs a lot to come up here.

MS. LENT: Okay. We are going beyond the agenda time. Are we okay then on points 1 and 2? We are not okay on points 1 and 2. Then let's just stick with point 1 as the only point of consensus that we have had this afternoon. That is unfortunate. I think thought if we invested more time, that we might get some more points of consensus.

As Mr. Jolly has pointed out, maybe that is not worth it. There are a lot of other issues where we had to cut off discussion. And if we wordsmith it to the point where it is pabulum, I am not sure how helpful that is. Again, we learned from the debate, and I do not consider this a waste of time. I have learned from the debate.

And we will just stop there. So we will start again tomorrow morning at 8:30. Thank you very much everybody. It has been a long day. We will see you at 8:30 tomorrow.

(End side B, tape 6.)